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# INTERNATIONAL REVIEW

## OF THE RED CROSS



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The *International Review of the Red Cross* invites readers to submit articles relating to the various humanitarian concerns of the International Red Cross and Red Crescent Movement. These will be considered for publication on the basis of merit and relevance to the topics to be covered during the year.

● Manuscripts will be accepted in *English, French, Spanish, Arabic* or *German*.

**Texts should be typed, double-spaced, and no longer than 20 pages (or 4 000 words). Please send diskettes if possible (*Word-perfect 5.1 preferred*).**

● Footnotes (*no more than 30*) should be numbered superscript in the main text. They should be typed, double-spaced, and grouped at the end of the article.

● Bibliographical references should include at least the following details: (a) for books, the author's initials and surname (in that order), book title (underlined), place of publications, publishers and year of publication (in that order), and page number(s) referred to (p. or pp.); (b) for articles, the author's initials and surname, article title in inverted commas, title of periodical (underlined), place of publication, periodical date, volume and issue number, and page number(s) referred to (p. or pp.). The titles of articles, books and periodicals should be given in the original language of publication.

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● Unpublished manuscripts will not be returned.

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## **FOLLOW-UP TO THE INTERNATIONAL CONFERENCE FOR THE PROTECTION OF WAR VICTIMS**

*(Geneva, 30 August - 1 September 1993)*

### **Meeting of the Intergovernmental Group of Experts for the Protection of War Victims**

*(Geneva, 23 - 27 January 1995)*

In its Final Declaration, the International Conference for the Protection of War Victims (Geneva, 30 August - 1 September 1993) undertook to give practical effect to its refusal to accept grave violations of international humanitarian law in the following terms:

*"With this Declaration in mind, we reaffirm the necessity to make the implementation of international humanitarian law more effective. In this spirit, we call upon the Swiss Government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with that law, and to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent".<sup>1</sup>*

In accordance with the Conference's decision, the Swiss Federal Council organized a meeting in Geneva from 23 to 27 January 1995, to which it invited representatives of the States party to the Geneva Conventions, and, as observers, a number of governmental and non-govern-

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<sup>1</sup> Final Declaration of the International Conference for the Protection of War Victims, *International Review of the Red Cross (IRRC)*, No. 296, September-October 1993, pp. 401-405.

mental organizations concerned with humanitarian matters. Switzerland thus invited the same group of participants as for the 1993 Conference. Unlike that conference, however, the meeting took place at the technical level, with a view to devising practical means of promoting respect for humanitarian obligations in times of armed conflict.

The experts, representing 107 States and 28 governmental and non-governmental organizations, met for five days in Geneva. Ambassador A. Luzius Caflisch, legal adviser to the Department of Foreign Affairs (Switzerland), acted as Chairman and Ambassador Sedfrey A. Ordoñez (Philippines) as Vice-Chairman. The Working Party was chaired by Ambassador Philippe Kirsch (Canada), assisted by Ambassador Jorge Berguno (Chile) as Vice-Chairman.

The experts concentrated on the points which a preparatory meeting, held in Geneva from 26 to 28 September 1994, had recommended for further study. These recommendations were published in the *International Review of the Red Cross*.<sup>2</sup>

The experts were also provided with a working document prepared by Switzerland on the basis of the preparatory meeting's recommendations and in consultation with the States.<sup>3</sup> The ICRC submitted its own suggestions concerning the nine recommendations.<sup>4</sup>

After five days of intensive discussions and negotiations, the experts adopted by consensus a set of "Recommendations" which, in accordance with its mandate, the group will be submitting to the 26th International Conference of the Red Cross and Red Crescent.<sup>5</sup> In chapters I to VII, the text identifies many possible ways of ensuring that humanitarian law is better accepted, understood and respected, ranging from educating the population as a whole to punishing violations. The ICRC is encouraged to provide support services in that respect, while attention is drawn to the role played by the National Societies in their own countries. Several delegations were disappointed that the group had not gone a stage further, for instance by recommending the institution of a system of mandatory reports concerning the implementation of international humanitarian law, a proposal which in the end the meeting failed to adopt. In the VIIIth

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<sup>2</sup> *IRRC*, No. 302, September-October 1994, pp. 448-449.

<sup>3</sup> See below, pp. 7-18.

<sup>4</sup> See below, pp. 19-32.

<sup>5</sup> See below, pp. 33-38.

recommendation, on the other hand, the ICRC is asked to address some particularly difficult problems.

It may be remembered that in its Final Declaration the International Conference for the Protection of War Victims called on Switzerland to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent. The Intergovernmental Group of Experts' recommendations undoubtedly provide a sound basis for the discussions of the 26th International Conference. It is now up to the delegates of the States and the representatives of the Movement meeting at that Conference in Geneva in December 1995 to take the necessary decisions, while bearing in mind the original goal, namely improved protection for war victims.

*The Review*

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**Meeting of the Intergovernmental  
Group of Experts  
for the Protection of War Victims**

*Geneva, 23-27 January 1995*

WORKING PAPER DRAWN UP BY THE SWISS GOVERNMENT  
ON THE BASIS OF THE NINE RECOMMENDATIONS  
MADE BY THE PREPARATORY MEETING  
HELD IN GENEVA

*(26-28 September 1994)*

**Introductory remarks**

*In its final declaration, the International Conference for the Protection of War Victims (30 August to 1 September 1993) called upon the Swiss government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with international humanitarian law (IHL), and to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent.*

*Having accepted that mandate, the Swiss Federal Council has scheduled the meeting of experts (the "Experts") for 23 to 27 January 1995.*

*After requesting all States that had been invited to the War Victims Conference to provide contributions on issues which, in their opinion, should be dealt with by the Experts as a matter of priority, the Swiss government convened a preparatory meeting ("Preparatory Meeting") of 60 States in order to prepare a working document for the Experts. The meeting took place from 26 to 28 September 1994.*

*The Preparatory Meeting submitted **nine recommendations** to the Experts, defining, in general terms, possible measures to promote com-*

*pliance with IHL and proposing that the Experts explore ways in which those broad measures might be translated into specific and practical means (according to one recommendation the ICRC would be called upon to analyse certain additional measures which could i.a. ensure universal respect for IHL). Those recommendations were sent in November 1994 to all States and other entities invited to the meeting of Experts.*

*In an effort to facilitate the Experts' work, the Swiss authorities, which are organizing the meeting, have drawn up i.a., and on the basis of contributions from governments, the present working paper which contains a number of suggestions on how the measures to promote compliance with IHL set forth in the above recommendations may be translated into more concrete means. It is understood, however, that this paper does not restrict the Experts' freedom to devise practical means as they themselves see fit.*

## **I. Ways and means to facilitate accession to IHL instruments**

### **1. Introduction<sup>1</sup>**

Universal applicability of IHL instruments is a precondition for proper implementation of their provisions. Indeed, the fact that belligerents may not all be bound by the same IHL instruments may lead to confusion and a degradation of humanitarian standards.

### **2. Recommendation**

The Preparatory Meeting recommends that the Experts

*“Explore ways and means of facilitating States' accession to IHL instruments, notably the 1949 Geneva Conventions and their Additional Protocols, the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its three Protocols, and the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, taking into consideration the services*

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<sup>1</sup> See Final Declaration of the International Conference for the Protection of War Victims (hereinafter the “Final Declaration”), points II.4 and 6, *International Review of the Red Cross (IRRC)*, No. 296, September-October 1993, p. 379.

*that, in particular, the ICRC, the National Red Cross and Red Crescent Societies and their Federation and the National Committees referred to below may be able to provide in that regard;*

*Consider, in this context, ways and means of facilitating States' recognition of the competence of the International Humanitarian Fact-Finding Commission according to Article 90 of Additional Protocol I".*

### **3. Practical means**

The Experts may consider recommending that

- the States party to IHL instruments promote accession thereto in their bilateral and multilateral contacts with non-contracting States;
- the depositaries of IHL instruments appeal to each non-contracting State to accede to the respective instruments, and publish periodically, e.g. in the *International Review of the Red Cross*, the state of accessions;
- the UN and other intergovernmental and regional organizations regularly include appeals to accede to specific IHL instruments in their agendas;
- the States that have recognized the competence of the International Humanitarian Fact-Finding Commission promote recognition thereof in their bilateral dealings, particularly with High Contracting Parties to Additional Protocol I that have not made the declaration under its Article 90, and make voluntary contributions as provided for in paragraph 7 of said provision, in order to facilitate promoting the recognition of the Commission's competence;
- national committees referred to under heading V below support their governments in the process of acceding to pertinent IHL instruments.

## **II. Ways and means of clarifying the role of customary rules of IHL**

### **1. Introduction<sup>2</sup>**

The vast majority of today's armed conflicts are non-international. With regard to those conflicts in particular, there is a widely-held view that the applicable rules and the state of accessions to the few existing international instruments in the relevant area of international law are

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<sup>2</sup> See Final Declaration, point I.4, *IRRC, op. cit.*, p. 378.

inadequate. In addition, there appears to be a considerable measure of uncertainty as to the scope and the role of customary rules governing both non-international and international armed conflicts.

## **2. Recommendation**

The Preparatory Meeting recommends that the Experts

*“Examine ways and means of clarifying the role of customary rules of IHL in the areas of international and non-international armed conflicts”.*

## **3. Practical means**

The Experts may consider recommending that

- States contribute to the clarification of customary rules of IHL by drawing up, for their armed forces, IHL manuals governing without distinction non-international and international armed conflicts;
- international bodies having the requisite expertise in IHL, such as the ICRC and scientific and academic institutions, e.g. the “Institut für Friedenssicherungsrecht und humanitäres Völkerrecht der Ruhr-Universität Bochum” or the “International Institute of Humanitarian Law” in San Remo, prepare a study clarifying the role of customary rules of IHL in the areas of international and non-international armed conflicts and submit the study to all States, with the assistance of the depositary of the 1949 Geneva Conventions and their Additional Protocols (the “Depositary”), and to the 26th International Conference of the Red Cross and Red Crescent;
- States support efforts to obtain an internationally recognized status for the “Declaration of Minimum Humanitarian Standards” adopted by a group of experts in Turku in December 1990.

# **III. Ways and means of providing advisory services to States in their efforts to implement IHL and disseminate its rules and principles**

## **1. Introduction<sup>3</sup>**

To be effective, IHL must be implemented at the national level, and its rules and principles must be disseminated within the armed forces as

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<sup>3</sup> See Final Declaration, points II.1, 2 and 5, *IRRC, op. cit.*, pp. 378-379.

well as the population at large. Many States party to IHL instruments find it difficult, however, to take implementation measures and to disseminate IHL in practice, whether for lack of trained personnel or for linguistic, financial or other reasons.

## **2. Recommendation**

The Preparatory Meeting recommends that the Experts

*“Study ways and means whereby bodies dealing with IHL, such as the ICRC, the National Red Cross and Red Crescent Societies and their Federation, may, possibly with the assistance of academic institutions, provide advisory services to States in their efforts to implement IHL and disseminate its rules and principles”.*

## **3. Practical means**

The Experts may consider recommending that

- the ICRC, with the assistance of the National Red Cross and Red Crescent Societies and their Federation, and of scientific, academic and other institutions, strengthen the advisory services it provides to States in their efforts to implement and disseminate IHL, on the basis, *i.a.*, of reports by the International Conference of the Red Cross and Red Crescent, pursuant to heading VI below;
- the States indicate to the ICRC the specific needs they may have for such advisory services;
- the ICRC submit periodic reports on its advisory services to the International Conference of the Red Cross and Red Crescent.

# **IV. Ways and means of improving dissemination of IHL**

## **1. Introduction<sup>4</sup>**

Proper application of IHL presupposes that those who are expected to apply it are thoroughly familiar with its principles and rules. Yet, as with increasing frequency in today's armed conflicts people who take up arms do not belong to regular armed forces, it is of utmost importance

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<sup>4</sup> See Final Declaration, points II.1 and 2, *IRRC, op. cit.*, pp. 378-379.

that dissemination of IHL reach not only national armed forces, but the population as a whole. Teaching programmes for these two target groups in fact already appear to exist in a number of States. Much could be gained from international cooperation in this field.

## **2. Recommendation**

The Preparatory Meeting recommends that the Experts

*“Examine ways and means of improving dissemination of IHL, putting particular emphasis on the education of students of all ages and increasing media awareness, as well as on the training of armed forces, and the preparation of handbooks on the law of armed conflicts in an effort to harmonize, to the extent possible, the manner in which IHL is disseminated and implemented in different States”.*

## **3. Practical means**

The Experts may consider recommending that

- the ICRC and the UN, including its organs and specialized agencies, such as UNESCO, coordinate their efforts to disseminate IHL;
- the States increase their efforts to educate and train the members of their armed forces and security forces, according to their specific ranks and functions, in the law of armed conflicts;
- the States draw up IHL handbooks which must be used by their armed forces as an integral part of military training;
- the ICRC prepare, in cooperation with experts from different regions of the world, a model handbook on IHL for armed forces and submit a draft thereof to the International Conference of the Red Cross and Red Crescent;
- the States increase their efforts to educate, where appropriate with the assistance of National Red Cross and Red Crescent Societies, the civilian population in the law of armed conflicts;
- academic and other institutions involved in educating the public devise specific programmes and teaching materials designed to imbue students of all ages with the principles of IHL and make those programmes available to interested States;
- governments, international organizations and other bodies dealing with IHL organize seminars with representatives of the national and international media in order to increase their awareness of IHL.

## **V. Ways and means whereby the creation of national committees may foster implementation and dissemination of IHL**

### **1. Introduction<sup>5</sup>**

Coordination of measures to implement and disseminate IHL is crucial not only at the international level but at the national level as well. While it appears that in many countries different government authorities are dealing with different aspects of IHL and are largely unaware of each other's endeavours, some governments have created committees of varied composition in order to coordinate national measures in the area of IHL.

### **2. Recommendation**

The Preparatory Meeting recommends that the Experts

*“Explore ways and means whereby governments may benefit from the creation of national committees to advise on and assist in national implementation and dissemination measures”.*

### **3. Practical means**

The Experts may consider recommending that

- States that have created national committees to advise governments on national implementation and dissemination measures share the benefit of their experience with States interested in the establishment of such committees;
- national committees already in existence cooperate with the body providing advisory services (see point III.3 above) to governments in their efforts to implement and disseminate IHL;
- an international body, such as the ICRC or a scientific or academic institution, organize a meeting of governmental experts from States having already instituted national committees and make a report of the meeting's conclusions available to other States interested in the creation of such committees.

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<sup>5</sup> See Final Declaration, point II.5, *IRRC, op. cit.*, p. 379.

## **VI. Ways and means whereby States could report to an international body dealing with IHL on their efforts to implement and disseminate IHL**

### **1. Introduction<sup>6</sup>**

An exchange of information among States on national measures of implementation and dissemination is desirable, as it allows States with less experience in this area, or more modest resources, to benefit from the experience and accomplishments of other States; moreover, certain aspects of such an exchange constitute a legal obligation under the 1949 Geneva Conventions, Additional Protocol I and the 1954 Hague Convention.

Yet, for various reasons this system of reporting on national measures has never worked satisfactorily.

### **2. Recommendation**

The Preparatory Meeting recommends that the Experts

*“Examine ways and means whereby States could report to an international body dealing with IHL, such as the ICRC or the International Conference of the Red Cross and Red Crescent, on their efforts to implement IHL and to disseminate its rules and principles”.*

### **3. Practical means**

The Experts may consider recommending that a system be established whereby

- States, where appropriate with the assistance of national committees and National Red Cross and Red Crescent Societies, report every four years to a commission of governmental experts, to be established pursuant to rules to be adopted at the 26th International Conference of the Red Cross and Red Crescent, on national measures taken to implement and disseminate IHL, including
  - national measures for the repression of violations of IHL;
  - the establishment of an internal system to monitor observance of IHL by the armed forces;
  - measures to train the armed forces in the application of IHL rules;

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<sup>6</sup> See Final Declaration, point II.5, *ibid.*



- measures to educate the general population, particularly students of all ages, in the principles and rules of IHL;
- legislation on the protection of the Red Cross and Red Crescent emblem;
- the ICRC provides the necessary administrative services to the commission referred to above;
- said commission prepares a summary report on the States' reports for submission to the International Conference of the Red Cross and Red Crescent or to a special conference convened by the Depositary, and makes any recommendation it may deem appropriate.

## **VII. Ways and means whereby the international community could react to violations of IHL and international cooperation could be improved in order to ensure respect for IHL**

### **1. Introduction<sup>7</sup>**

IHL reflects universally accepted human values. Violations of its principles and rules must therefore be a subject of grave concern to the international community as a whole, and they warrant joint reactions.

### **2. Recommendation**

The Preparatory Meeting recommends that the Experts

*“Examine ways and means whereby the international community could react in the face of violations of IHL, as well as the possibilities of improving cooperation between States and the United Nations or other international fora and bodies in order to ensure respect for IHL”.*

### **3. Practical means**

The Experts may consider recommending that the States

- exert, in compliance with international law, whatever influence they may have, including through diplomatic and economic means, in order to ensure respect for IHL by the parties to an armed conflict;

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<sup>7</sup> See Final Declaration, point II.11, *IRRC, op. cit.*, p. 380.

- cooperate within universal and regional frameworks
  - to exert, where appropriate, political, economic or any other pressure on persistent violators of IHL, and
  - to establish and enforce demilitarized zones for the protection of civilian populations;
- establish arms export and control policies that distinguish States that comply with IHL from those that do not;
- strengthen their commitment to prosecute or extradite war criminals apprehended in their jurisdictions;
- support efforts to establish, on a global and a regional level, criminal jurisdictions for the prosecution of violators of IHL and implement all national measures necessary to ensure their proper functioning;
- cooperate with universal and regional intergovernmental organizations and with the International Humanitarian Fact-Finding Commission in their efforts to enquire into violations of IHL, by providing them, whenever requested, with funds, experts and logistical support.

## **VIII. Ways and means of dealing with specific violations of IHL and discussing general problems regarding the application of IHL**

### **1. Introduction<sup>8</sup>**

While enforcement of IHL and repression of its violations are primarily the responsibility of the civilian and military authorities of the parties to an armed conflict, the conviction that particularly serious violations of IHL ought to be the concern of the international community at large, has of late gained considerable ground. This new attitude is reflected by the establishment of international tribunals for war crimes committed in the former Yugoslavia and Rwanda, the progress which the creation of an international criminal court has made in recent years, and the fact that more States have recognized the competence of the International Humanitarian Fact-Finding Commission in the last four years than in the previous thirteen.

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<sup>8</sup> See Final Declaration, point II.11, *ibid.*

What may still be lacking, however, is an international forum dealing with specific violations of IHL on an intergovernmental level.

In addition, there may be a need for a forum to discuss measures of improving observance of IHL in general.

## **2. Recommendation**

The Preparatory Meeting recommends that the Experts

*“Explore practical ways and means of dealing with specific violations of IHL and discussing general problems of the application of IHL, e.g., by strengthening the role of the International Conference of the Red Cross and Red Crescent and by making better use of the forum provided for in Article 7 of Protocol I additional to the 1949 Geneva Conventions”.*

## **3. Practical means**

The Experts may consider recommending that

- States assist international and national fora dealing with specific violations of IHL by providing information received, *i.a.*, from refugees who have been the victims of or have witnessed serious violations of IHL;
- the Depositary or the International Conference of the Red Cross and Red Crescent organize, in the period immediately preceding or following, or periodically between Conferences, a meeting of government representatives and interested intergovernmental and non-governmental organizations, in order to discuss specific violations of IHL on the basis of information provided by States, intergovernmental or non-governmental organizations; and that the meeting draw up a report to be submitted to the Conference and propose recommendations that the Conference may wish to communicate to the States concerned;
- the States step up their discussions of specific violations of IHL within the framework of the UN Commission on Human Rights and continue to convene, in situations where grave violations of human rights and IHL instruments have occurred, extraordinary sessions of said Commission in order to deal with those violations;
- the Depositary organize periodic meetings — of the kind provided for in Article 7 of Additional Protocol I — of the States party to the 1949 Geneva Conventions to discuss general problems regarding the application of IHL.

## **IX. Analysis by the ICRC of measures ensuring universal respect for IHL, the protection of women and children and the rights of refugees, and of situations where States' structures have disintegrated**

### **1. Introduction<sup>9</sup>**

The debate at the Preparatory Meeting showed that there are important issues, relating to armed conflicts and the protection of their victims, that are too complex to be considered by the Experts within the short time at their disposal, and that thorough discussion thereof should take place at a later date, on the basis of preparatory studies conducted by the ICRC.

### **2. Recommendation**

The Preparatory Meeting recommends that the Experts call upon the ICRC to

*“(a) analyse measures which could ensure, i.a.,*

- universal respect for IHL, particularly as it relates to civilians who are more and more often the victims of the use of means and methods of war consisting of systematic and large-scale killings by any armed groups, as well as of other violations of IHL in any armed conflict,*
  - full protection for women and for children from violations of IHL,*
  - full protection of the rights of refugees from violations of IHL, including the 1951 Convention relating to the status of refugees;*
- (b) examine situations where States' structures have disintegrated as a result of non-international armed conflicts”.*

### **3. Practical means**

The Experts may consider calling upon the ICRC to analyse the measures and examine the situations referred to under paragraph 2 above.

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<sup>9</sup> See Final Declaration, points I.1 and 3, and point II.3, *IRRC, op. cit.*, pp. 377, 379.

**Meeting of the  
Intergovernmental Group of Experts  
for the Protection of  
War Victims**

*(Geneva, 23-27 January 1995)*

**PROPOSALS**

**BY THE**

**INTERNATIONAL COMMITTEE  
OF THE RED CROSS**

**Special Rapporteur at the International Conference  
for the Protection of War Victims**

*(Geneva, 1993)*

***Geneva, 28 December 1994***

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## Preamble

The ICRC was closely involved in the International Conference for the Protection of War Victims (Geneva, 1993) and in the follow-up efforts, which reflect concerns that lie at the heart of the institution's mandate and its humanitarian work in armed conflicts.

On the basis of its experience, the ICRC drew up a Report on the Protection of War Victims, which formed the basis of the 1993 Conference and was followed by a document entitled "Protection of War Victims — Suggestions of the International Committee of the Red Cross" (April 1994), in which the ICRC raised the principal issues that it felt should receive further consideration.

So as to contribute as effectively as possible to the work of the intergovernmental group of experts in January 1995, the ICRC also consulted the other components of the International Red Cross and Red Crescent Movement during a meeting with experts from the National Societies and their International Federation on 12 and 13 September 1994. It then also sent them a document drawn up following the preparatory meeting of intergovernmental experts, held from 26 to 28 September 1994, for consultation.

Despite the pledges made by the States at the 1993 International Conference, the plight of conflict victims, far from improving, has in fact worsened. It is therefore high time that decisions were made and action taken to break this tragic and intolerable deadlock. The ICRC, with the support of the National Societies and their International Federation, will do its utmost to contribute to this effort.

As regards the specific issues recommended for consideration by the experts, the ICRC wishes to make proposals on four main topics, on which it hopes that substantial progress will be made:

- the universal recognition and acceptance of international humanitarian law (IHL);
- the systematic adoption and strengthening of national measures for the implementation of IHL;
- the dissemination of IHL and its rules among the general population and more particularly among the armed forces and other persons bearing arms;
- the reaction of the international community to breaches of IHL and the repression of violations.

The ICRC stands ready, moreover, to carry out any additional studies which the experts might entrust to it on the basis of the recommendations made by the preparatory meeting.

## **1. Universal recognition and acceptance of international humanitarian law**

*Refs.: 1st, 2nd and 3rd recommendations*

Universal recognition of IHL is essential if its provisions are to be properly implemented. The fact that belligerents are not all bound by the same Conventions may give rise to confusion and therefore weakens the authority of the humanitarian rules.

Compliance with the provisions restricting methods and means of combat, in particular, will be all the more difficult to secure if they are not universally accepted. States will notably hesitate to renounce a weapon proscribed by a treaty if their potential enemies possess the same weapon and are not bound by the treaty in question.

There are three possible ways of achieving this general goal, and all three should be given close consideration.

### **1.1 Universal acceptance of all the humanitarian treaties**

This first requirement is also the most obvious. Obstacles to ratification of or accession to the humanitarian treaties may be of an administrative, military or political nature.

#### ***ICRC proposals***

- To remove administrative obstacles, it should be recommended that accession to IHL instruments be examined as a matter of priority, considering their direct impact on the plight of war victims.
- To remove military obstacles, it should be recommended that the military authorities in States bound by the humanitarian instruments examine, together with their counterparts in countries that



**have not become party to them, the practical implications of treaty obligations as regards the conduct of military operations.**

- **To remove political obstacles, the universal impact of decisions concerning IHL treaties should be underscored, and hence the responsibility of governments in this respect towards all victims of war.**

The ICRC, for its part, will relentlessly pursue its efforts to explain the humanitarian treaties and urge States to become party to them, and to this end intends to rely more extensively on the National Societies, which have already played a major role in this regard in several countries.

The role of the United Nations General Assembly and the regional organizations not only in adopting resolutions urging States to become party to these treaties but also in seeing that these resolutions are followed up should also be examined in depth.

### ***ICRC proposals***

- **Extend to cover all the main IHL treaties the debate regularly devoted by the UN General Assembly to the 1977 Additional Protocols.**
- **Systematically place such a review on the agenda of meetings of regional organizations.**

## **1.2 Adaptation of international humanitarian law**

The revision of IHL is an extremely long and arduous process. There is a period of at least ten years between drafting the initial version of any convention and its adoption by a Diplomatic Conference, and it takes twenty years at least from the time of adoption to achieve practically universal acceptance of the treaty. The figures may vary but they do indicate the scale of the problem. This thirty-year time lapse naturally gives rise to concern when one realizes that the universality of IHL is a *sine qua non* for its effective application and that the techniques of warfare and the circumstances in which war is waged undergo constant change. It is therefore necessary to resist the temptation of relaunching a large-scale revision of the law when universal acceptance of the existing treaties has not yet been achieved — the more so since the fundamental rules of IHL remain perfectly valid.

But examination of this issue must be taken one step further. It is neither necessary nor timely to envisage an overall revision of IHL, but it would be desirable to adapt or clarify some of its provisions. There are for example the provisions affording special protection to women and children; the rules governing the monitoring of relief supplies (linked to the problem of famine in war and the question of embargoes); and the provisions aimed at safeguarding the health of the civilian population in times of war.

The rules pertaining to prohibitions or restrictions on the use of certain weapons should likewise achieve universal adoption in the very near future.

Finally, the dire effects on civilians of the large-scale circulation of weapons deserve close consideration.

Appropriate means of rapidly adapting the law must therefore be found.

### ***ICRC proposals***

- **Make optimum use of International Conferences of the Red Cross and Red Crescent to clarify IHL and highlight problems with regard to its implementation.**
- **Make effective use of the opportunity afforded by Article 7 of 1977 Additional Protocol I to organize meetings in order to examine general problems arising with respect to the application of IHL.**

## **1.3 Consistency of instructions regarding IHL for armed forces worldwide**

Achieving universal recognition of IHL does not concern the diplomatic world alone. Action must also be taken in the field. That is why it is essential to maintain a dialogue with the military regarding the incorporation of the humanitarian rules into the training of armed forces. Dialogue with and among the military should lead to clarification of the practical impact of the rules of humanitarian law on the conduct of military operations. It should in particular demonstrate the fact that directives concerning the conduct of hostilities in non-international armed conflicts are almost always the same as those applicable in international

conflicts. It is certainly desirable that they should be so, because it would be totally unacceptable, to take a striking example, to agree not to use a weapon and then claim the right to use it against one's own population.<sup>1</sup> Finally, dialogue at this level should make it possible to deal more effectively with issues such as the protection of the environment in the light of recent experience.<sup>2</sup>

### *ICRC proposals*

- **Organize regular regional meetings, with government support, to examine and develop a consistent set of military IHL instructions.**
- **Carry out a comparative analysis of existing instructions to single out their main common characteristics and develop teaching materials on that basis.**

## **2. Systematic adoption and strengthening of national measures for the implementation of international humanitarian law**

### *Refs.: 3rd, 5th and 6th recommendations*

If IHL is to be effectively implemented in times of armed conflict, firm and systematic measures must be taken in peacetime to put it into effect at the national level.

Does domestic legislation adequately provide for the repression of war crimes and other violations of IHL? Is there a law protecting the Red Cross and Red Crescent emblem? Are the armed forces being given appropriate instructions? Are the principles of IHL being taught at all levels of the

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<sup>1</sup> Such uniformity of humanitarian rules governing the conduct of hostilities in international armed conflicts and internal conflicts would not mean, however, abolishing all differences between the rules of international humanitarian law applicable to these two types of conflict — the most striking example being that the rules governing occupation obviously cannot be applied to internal conflicts.

<sup>2</sup> See *Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict*, Report of the Secretary-General to the UN General Assembly, Doc. A/49/323, Annex.

education system? Do universities have a chair of international humanitarian law? These are but a few of the many questions that States should ask themselves.

Since the adoption in 1977 of the Protocols additional to the Geneva Conventions of 12 August 1949, the ICRC has regularly sent all the States a list of basic measures that they should adopt in peacetime to ensure the implementation of these instruments.

Between 1988 and 1991, the ICRC wrote to all the States asking them what national measures they had adopted or were considering. The National Societies also took part in this survey. In cooperation with them, the ICRC has organized national and regional seminars, conducted missions, published articles in the *International Review of the Red Cross* and, on request, has provided States with advice on their existing or draft legislation in this regard.

Moreover, the National Societies and ICRC delegates in the field constantly strive to impress upon the authorities concerned, members of the armed forces and civilians the importance of respecting and spreading knowledge of humanitarian standards. They also advise them on such matters.

The fact that relatively few States have so far adopted satisfactory implementation measures and that large-scale violations of IHL are committed in many conflicts today underscores the need for a marked increase in such efforts, and State responsibility in this regard must be emphasized.

To attain this objective, a system should be set up at the international level to help States devise their own national implementation measures. Its creation would enhance national efforts, just as the effectiveness of such an international system would depend on the existence of national mechanisms.

### ***ICRC proposals***

- **Create a regular reporting system to enhance dialogue with and among States on national measures and to increase the effectiveness of such measures, while avoiding complex administrative procedures.**
- **Set up an international committee of experts on IHL, representing the world's main legal systems, to examine the reports and advise States on any matters regarding the implementation of IHL.**

*Commentary on this proposal*

- The committee should meet at regularly, about once a year.
  - It could report to the International Conference of the Red Cross and Red Crescent (which meets in principle once every four years).
  - The ICRC is prepared to designate the committee members if the States so request, or they could be appointed by the International Conference of the Red Cross and Red Crescent.
  - The committee members could be recruited from among the members of national interministerial committees.
  - The ICRC is prepared to handle the committee's administration and provide the necessary follow-up between its meetings.
- **Step up and generalize the ICRC's advisory services and develop those provided by National Societies, in order to assist the States and promote the exchange of information.**
- **Increase coordination between these services and other advisory services, such as those provided by the UN Centre for Human Rights and regional organizations, and academic circles at the national and international levels.**
- **Create in each country a national interministerial committee responsible for coordinating the adoption of national implementation measures, with the participation as far as possible of a National Society representative.**
- **Encourage the designation and training of a National Society staff member to assist the country's authorities in this regard and to serve as a contact with the other components of the International Red Cross and Red Crescent Movement.**

*General comments*

The financing of these measures should also be given close consideration.

The ICRC believes it is necessary to adopt a comprehensive approach to these measures, which must be viewed as a whole and developed harmoniously.

On the other hand it considers it important to distinguish clearly between measures solely designed to help States fulfil their obligations and those required to repress violations of IHL.

### **3. Dissemination of humanitarian law and its rules among the general population and more particularly among the armed forces and other persons bearing arms**

#### *Ref.: 4th recommendation*

This matter is in fact closely related to the issues dealt with under the previous heading, as instruction in IHL must be developed primarily at the national level. It does, however, call for particular attention.

It is essential that IHL be taught and disseminated in peacetime, since it will not be respected unless it is known by those who must comply with it and ensure its implementation.

These activities were recognized as crucial and accordingly set forth as an obligation for States in the 1949 Geneva Conventions and their 1977 Additional Protocols. The international community furthermore mandated the ICRC to take part in them, with the support of the National Societies and their International Federation.

If the military are to abide by IHL in wartime, the teaching of the humanitarian rules must be incorporated into military instruction, and the values on which the law is based must be recognized as fundamental within the society to which the military belong. The teaching of these rules and values must therefore form an integral part of the education system.

#### **3.1 Dissemination of the humanitarian rules among the general population**

A systematic effort to improve national education in this regard should be undertaken in each country.

#### *ICRC proposals*

- Include courses on IHL in national education programmes at all levels, the content and form of these courses being tailored to the audience and to the cultural context.
- Step up and strengthen cooperation between UNESCO and the ICRC in this field.

- **Give priority attention to the matter within the context of national measures for the implementation of IHL.**
- **Increase the support provided by National Societies to their respective governments in this field, making use of their knowledge of the humanitarian rules and of local conditions and circumstances, and step up the training of these Societies, with support from the ICRC and their International Federation.**

Providing instruction in IHL is extremely difficult in countries where educational facilities are inadequate or have seriously deteriorated on account of armed conflict, disturbances or simply the lack of resources.

When confronted with a situation of armed conflict the ICRC, working in cooperation with the National Societies, has had to do everything possible even in such circumstances to promote understanding of and respect for humanitarian assistance in order to be able to reach the victims. Major campaigns have been launched, essentially through local structures or well-known local people, to get humanitarian messages across in situations where tension among the population was so great that everyone feared the worst. Ad hoc means, such as the radio, visual images, i.e. all available means of communication, have been tried out, sometimes with a certain degree of success.

It should also be pointed out that even in the above-mentioned situations National Societies can get certain humanitarian messages across while conducting programmes on behalf of the most vulnerable members of a community.

### ***ICRC proposals***

- **Carry out an in-depth analysis of experimental activities undertaken in particularly difficult circumstances to promote understanding of and compliance with the humanitarian rules, in order to turn the lessons learnt from them to maximum account in the future.**
- **Step up efforts to promote the development of National Societies, to be coordinated by the International Federation, and use National Society activities on behalf of the most vulnerable categories of the population to convey messages of humanity and tolerance.**

## 3.2 Instruction to the armed forces

### 3.2.1 Instruction to the regular armed forces

For instruction to regular armed forces, the ICRC recently set up a new division for dissemination to the military and a pool of army officers from various countries who specialize in teaching IHL. The latter will conduct courses and seminars all over the world. These instructors also take part in the courses for senior officers that have been organized for many years by the International Institute of Humanitarian Law, in San Remo, Italy, and in various seminars for national dissemination officers held by the ICRC in Geneva.

#### *ICRC proposal*

- **Every State should review and if necessary strengthen its national system for IHL instruction to the armed forces and consider what support it can provide in terms of international cooperation.**

### 3.2.2 Instruction to dissident armed forces

Although it is often difficult to gain access to dissident armed forces, there has been some success in providing them with instruction in the humanitarian rules, especially if such forces are structured and can be reached through a well-defined chain of command.

#### *ICRC proposal*

- **Review the efforts made so far in persuading dissident forces to comply with IHL and the humanitarian rules, in order to draw lessons for the future.**

#### *Commentary*

The problems experienced in approaching certain dissident forces should not in any way discourage the efforts already being made with regular troops. It is important to convince the latter, and indeed all armed forces, that respect for IHL, far from weakening such forces, strengthens them from a moral and disciplinary point of view and enhances their acceptance by the population. The conduct of regular armed forces in that respect sets a vital example.



## **4. Reaction of the international community to breaches of international humanitarian law, and the repression of violations**

*Refs: 7th and 8th recommendations*

The question of the international community's reaction to large-scale violations of IHL goes beyond the scope of the present group of experts, because the situations engendered by such violations constitute a threat to international peace and security within the meaning of Chapter VII of the United Nations Charter and therefore call for a reaction on the part of the UN Security Council. Priority must therefore be given to examining every possible means of preventing violations committed in armed conflicts from reaching a point at which they become extremely difficult to control.

When faced with violations of IHL witnessed by its delegates in the field, the ICRC's first step is to make confidential bilateral representations to the parties responsible and try to persuade them to comply with the humanitarian rules, while cooperating with them so that the victims can receive the protection and assistance to which they are entitled.

When bilateral representations fail to restore an attitude of respect for the humanitarian rules, the ICRC may take public action or draw the attention of other States to certain violations necessarily of concern to them by virtue of Article 1 common to the four Geneva Conventions.

The number of violations being committed in armed conflicts today unfortunately shows that these mechanisms alone are not sufficient to restore respect for IHL in all situations.

### ***ICRC proposals***

- **Consider how the States could increase their cooperation with the ICRC when, in accordance with its policy, it exceptionally draws their attention to grave and repeated violations which its confidential bilateral representations to the State have failed to bring to an end.**
- **Re-examine means of putting the system of Protecting Powers into effect.**

- **Make optimum use of the International Fact-Finding Commission established under Article 90 of 1977 Additional Protocol I, and urge the parties to accept the Commission's readiness to work in all situations of international or non-international conflict, if the parties involved so request.**
- **Support efforts to punish war criminals, wherever they may be, by compliance on the part of each State with its obligation to exercise universal jurisdiction over the perpetrators of grave breaches and by establishing an international criminal court to prosecute war crimes and crimes against humanity.**
- **Consider the role that can be played by the International Conference of the Red Cross and Red Crescent with regard to violations of IHL.**

## **5. ICRC analysis of measures designed to ensure universal respect for international humanitarian law, the protection of women and children and the rights of refugees, and of situations where government structures have collapsed**

### ***Ref.: 9th recommendation***

The preparatory meeting suggested that the experts recommend an analysis by the ICRC of these specific issues concerning the implementation of IHL.

The ICRC customarily draws up a report on the principal humanitarian issues worldwide for submission to the International Conference of the Red Cross and Red Crescent.

It is therefore willing to carry out the analysis recommended by the Preparatory Meeting as part of its report to the 26th International Conference of the Red Cross and Red Crescent (Geneva, 4-8 December 1995).

The ICRC nevertheless trusts that this recommendation will not deter the intergovernmental group of experts which will be meeting from 23 to 27 January 1995 from proposing without delay, pursuant to the mandate entrusted to it, any practical measures designed to promote respect for IHL.

## **Meeting of the Intergovernmental Group of Experts for the Protection of War Victims**

*(Geneva, 23-27 January 1995)*

### **RECOMMENDATIONS**

#### **— I —**

The Experts recommend that:

- the International Committee of the Red Cross (“the ICRC”) continue its dialogue with States with a view to promoting their adherence to international humanitarian law (“IHL”) instruments and assist them in dealing with issues that arise in this respect;
- the Depositaries of IHL instruments appeal to States not party to them to adhere to such instruments, carry out appropriate promotional activities for that purpose and publish periodically, e.g. in the *International Review of the Red Cross* and other public sources of information, the list of States party to those instruments;
- in their regular programme of activities, the competent organs of the UN and other intergovernmental organisations, universal and regional, encourage States to adhere to specific IHL instruments;
- the States Parties to IHL instruments support the efforts of the ICRC, the Depositaries and the organisations mentioned above, to promote adherence to such instruments;
- the States Parties that have recognised the competence of the International Humanitarian Fact-Finding Commission established under Article 90 of Protocol I additional to the 1949 Geneva Conventions

(“Protocol I”) support, where appropriate, the Commission's efforts to promote recognition of its competence; and encouragement of voluntary contributions to increase the Commission's funds available for that purpose;

- States consider availing themselves of the services of National Red Cross and Red Crescent Societies (“the National Societies”) and national committees referred to in chapter V in the process of adhering to pertinent IHL instruments.

## — II —

The Experts recommend that:

- the ICRC be invited to prepare, with the assistance of experts on IHL representing various geographical regions and different legal systems, and in consultation with experts from governments and international organisations, a report on customary rules of IHL applicable in international and non-international armed conflicts, and to circulate the report to States and competent international bodies.

## — III —

The Experts recommend that:

- the ICRC, with the assistance of National Societies, the International Federation of Red Cross and Red Crescent Societies (“the International Federation”) and academic institutions, strengthen its capacity to provide advisory services to States, with their consent, in their efforts to implement and disseminate IHL;
- States and National Societies indicate to the ICRC or, as appropriate, to the International Federation the specific needs they may have for such advisory services;
- the ICRC submit reports on its advisory services to the States party to the 1949 Geneva Conventions and other interested bodies on an annual basis, and to the International Conference of the Red Cross and Red Crescent (“the Conference”).

— IV —

The Experts recommend that:

- the ICRC, in carrying out its mandate to disseminate IHL, work together, wherever possible, with other interested bodies including the International Federation, UN organs and specialised agencies, and regional organisations;
- States, on a regional and global basis, promote exchanges of information on dissemination and implementation of IHL;
- the ICRC prepare, in cooperation with experts from various geographical regions, a model manual for armed forces on the law of international and non-international armed conflicts;
- States produce national manuals on the law of armed conflicts, use them as an integral part of military training, and, where possible, consult among themselves with a view to harmonising such manuals;
- States increase their efforts, at national and international levels, to train civilian and military instructors in IHL, and to train in that law members of civilian administrations, armed forces, security forces and paramilitary forces, and members of armed forces engaged in international peacekeeping operations, according to their specific ranks and functions;
- States, where appropriate with the assistance of National Societies, increase the civilian population's awareness of IHL, thus contributing to the dissemination of a culture based on respect for the individual and human life, in all circumstances;
- States, in collaboration with National Societies, take advantage of the celebration of World Red Cross and Red Crescent Day to promote the dissemination of IHL;
- States, where appropriate with the assistance of National Societies and academic institutions involved in public education, make every effort to produce specific programmes and teaching materials designed to imbue students of all ages with the principles of IHL and make those programmes available to interested States;
- States, the ICRC, National Societies and the International Federation, encourage the production of audiovisual materials and the organisation of seminars in order to heighten awareness of IHL issues among representatives of the national and international media;

- the ICRC and States make efforts to provide technical assistance in order to ensure that basic documents of IHL are widely available in national languages;
- the Conference note that religious and ethical values foster respect for human dignity and the principles of IHL.

— V —

The Experts recommend that:

- States be encouraged to create national committees, with the possible support of National Societies, to advise and assist governments in implementing and disseminating IHL;
- States be encouraged to facilitate cooperation between national committees and the ICRC in their efforts to implement and disseminate IHL;
- the ICRC organize a meeting of experts from States having already established national committees and from other interested States, and report on the meeting's conclusions to States interested in the establishment of such committees.

— VI —

The Experts recommend that:

- in order to comply with their commitments in this regard under IHL instruments, States
  - be invited by the Conference to provide to the ICRC any information which might be of assistance to other States in their efforts to disseminate and implement IHL;
  - make every effort to participate in the fullest possible exchange of information on the measures that they have taken to implement their obligations under IHL instruments;
- in order to facilitate these measures, the ICRC
  - continue to participate actively in efforts to disseminate and implement IHL;

- be encouraged to draw up guidelines, from time to time, for the purpose of enhancing the exchange of information;
- collect, assemble and transmit the information provided to States and to the Conference.

## — VII —

The Experts recommend that:

- in order to fulfil their basic obligation to respect and ensure respect for IHL in all circumstances, and taking into account, in particular, the vulnerability of civilian populations, and the responsibility of States which violate IHL, States
  - act, jointly or individually, in situations of serious violations of IHL, in cooperation with the United Nations and in conformity with the United Nations Charter;
  - establish, wherever possible, and in conformity with IHL, safety zones, demilitarised zones, humanitarian corridors and other forms of protection for civilian populations, in situations of armed conflict, and cooperate to ensure respect for decisions adopted by the competent UN organs to that end, in accordance with the UN Charter;
  - enact and rigorously implement whatever legislation is necessary to give effect to their obligations to ensure that those who commit, or order to be committed, violations of IHL do not go unpunished; and afford one another the greatest measure of assistance in criminal proceedings, including the provision of evidence and information from relevant sources, e.g. refugees;
  - participate actively in the ongoing discussions within the UN on the establishment of a permanent international criminal court, and implement all national measures to ensure the functioning of the ad hoc tribunals for the former Yugoslavia and Rwanda established by the UN Security Council;
  - cooperate with relevant international and regional intergovernmental organisations and, if they so wish, the International Humanitarian Fact-Finding Commission established under Article 90 of Protocol I, in conducting enquiries into violations of IHL, including by providing them, whenever possible, with funds, experts or logistical support;

- the Depositary organise periodical meetings of the States party to the 1949 Geneva Conventions to consider general problems regarding the application of IHL.

## — VIII —

The Experts call upon the ICRC:

- a) to analyse measures which could ensure, *inter alia*,
  - universal respect for IHL, particularly as it relates to civilians who are more and more often the victims of the use of means and methods of war consisting of systematic and large-scale killings by any armed groups, of “ethnic cleansing” and of other violations of IHL in any armed conflict;
  - full protection for women and children from violations of IHL, taking into account any contribution on these subjects which might be available, in particular from the 1995 World Conference on Women and from relevant UN organisations, including UNICEF and UNHCR;
  - full protection of the rights of refugees and of displaced persons from violations of IHL and the 1951 Convention relating to the status of refugees and its Protocol, taking into account any information which might be available, in particular from UNHCR;
- b) to examine situations where State structures have disintegrated as a result of non-international armed conflicts;
- c) to examine, on the basis of first-hand information available to it, the extent to which the availability of weapons is contributing to the proliferation and aggravation of violations of IHL in armed conflicts and the deterioration of the situation of civilians;
- d) to prepare, in collaboration with the International Federation, a draft recommendation for consideration by the Conference, encouraging voluntary contributions to support programmes for the dissemination and implementation of IHL, with particular emphasis on the protection of war victims.



**Elisabeth Kornblum**

**A comparison of self-evaluating  
state reporting systems**

**Geneva, January 1995**

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*Note:* The complete text of the present article was published as an offprint in January 1995. The text of chapters 7, 8 and 9, together with the conclusions and tables, will appear in the March-April 1995 issue.

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# A comparison of self-evaluating state reporting systems

by Elisabeth Kornblum

## ABSTRACT

A self-evaluating state reporting system is a method for implementing international agreements. A self-evaluating state report provides information on the operation and implementation of a treaty regime. Self-evaluating means that a state monitors its own execution of an international agreement in its territory. The information may be submitted to an international institution with a supervisory role or to a technical secretariat.

The key tasks of a supervisory international organization are: collecting information and data, receiving reports on treaty implementation by States, facilitating independent monitoring and inspection, and acting as a forum for reviewing the performance of states or the negotiation of further measures and regulations. Such bodies may acquire law-enforcement and law-making functions.

This report describes the self-evaluating state reporting systems of the United Nations human rights conventions, the Organization for Economic Co-operation and Development, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Intellectual Property Organization, the disarmament treaties and the environment treaties.

There are several characteristics of determining importance for the functioning of a reporting system. In short, these are: the sensitivity of the subject of a treaty; the economic value of the subject; the specificity of the subject; the popularity of the subject in the media; secretarial support; the flexibility of the reporting procedure; a permanent body to which to report; the quality and efficient functioning of the supervisory body; follow-up; admission to an international instrument and the existence of a national monitoring body or procedure.

It should be noted that the allocation of sufficient human and financial resources will be essential to the effectiveness of a reporting system.

## INTRODUCTION

The goal of this paper is to find out what entails a self-evaluating state reporting system, what are the characteristics that render such a system successful, and which of them could be used in a system to stimulate preventive implementation of humanitarian law.

To this end, the systems of the United Nations human rights conventions, the Organization for Economic Co-operation and Development, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Intellectual Property Organization, the disarmament treaties and the environment treaties, are studied.

In addition to reports by States parties to the treaties, a common mandatory implementation mechanism, some conventions contain other implementing mechanisms, such as **fact-finding, research and on-site inspections**.

The counterpart of implementing preventive measures are mechanisms dealing with violations, for example, **complaints procedures** for states or individuals.

The above-mentioned mechanisms are all based on an international agreement. There are also, however, a number of procedures that are not treaty-based and that also deal with observance of international agreements, either to prevent violations or to redress them. There is the United Nations Commission on Human Rights, which uses extra-conventional monitoring procedures, known as **working groups** and **special rapporteurs**, to oversee the application of the principles set out in the various declarations and conventions. Such procedures can be divided into thematic mandates (e.g. torture, extra-judicial executions, sale of children) and country-oriented mandates (e.g. Iraq, Occupied Territories, Sudan, Rwanda). The working groups and special rapporteurs collect information and conduct fact-finding missions, upon the basis of which reports are produced for the consideration of the Commission on Human Rights. The best-known procedure is the **confidential "1503 proceedings"**, that deals with communications alleging that governments have shown a "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms".

This paper, however, will deal mainly with non-political, treaty-based, multilateral, state reporting systems.

### CHAPTER 1

## AN IMPLEMENTATION MECHANISM FOR INTERNATIONAL HUMANITARIAN LAW DURING PEACETIME?

The Geneva Conventions of 1949 and the Additional Protocols of 1977 do not provide for any reporting system that evaluates the measures taken by a State

party in peacetime to implement humanitarian law. The duties of States parties are clearly stated in the Conventions and Protocols: States must make official translations, adopt national laws and regulations, disseminate and instruct the armed forces and make material preparations.<sup>1</sup> This should already be done in peace-time and States parties should communicate the results of their efforts to one another through the depositary (during armed conflicts through the Protecting Power).<sup>2</sup> States have so far not done enough to meet this obligation.<sup>3</sup>

Based on its mandate to work for the faithful application of IHL (International Humanitarian Law), the ICRC has collected information on national measures to repress violations of humanitarian law; the use and protection of the Red Cross/Crescent emblem; and dissemination activities. The ICRC submitted reports of these subjects on the basis of reports submitted by States parties to the International Conference of the Red Cross and the Red Crescent.<sup>4</sup>

During the 1974-1977 Diplomatic Conference (which resulted in the adoption of the Additional Protocols), the ICRC drafted Article 83 of Protocol I,<sup>5</sup> on dissemination, to include a reporting obligation every four years on measures taken in the area of dissemination. This proposal was not accepted by States.<sup>6</sup>

In 1986, during the XXVth International Conference of the Red Cross and the Red Crescent, Resolution V was adopted. States parties were urged to fulfil their obligation to adopt or supplement the relevant national legislation, as well as to inform one another of the measures taken or under consideration for this purpose. The ICRC received the mandate to "gather and assess" information submitted by Governments and National Societies, and subsequently to report regularly on the follow-up at the International Conferences.<sup>7</sup> Resolution V also invites National Red Cross/Crescent Societies to assist and cooperate with their governments to submit reports.

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<sup>1</sup> GC I, 23, 26, 44, 47, 48, 53; GC II, 39, 45, 48, 49; GC III, 127, 128; GC IV, 144, 145; AP I, 6, 12 to 31, 80, 82, 83, 84, 87; AP II, 19.

<sup>2</sup> GC I, 48; GC II, 49; GC III, 128; GC IV, 145; AP I, 84.

<sup>3</sup> M.T. Dutli, *Mechanisms for the Implementation of International Humanitarian Law*, Expert Meeting on Certain Weapon Systems and on Implementation Mechanisms in International Law (Geneva, 30 May-1 June), Report drawn up by the ICRC, July 1994, 120-127.

<sup>4</sup> K. Drzewicki, "National Legislation as a Measure for Implementation of International Humanitarian Law", in F. Kalshoven, Y. Sandoz, eds., *Implementation of International Humanitarian Law. Research Papers by participants in the 1986 Session of the Centre for Studies and Research in International Law and International Relations of the Hague Academy of International Law* (1989), 109-131.

<sup>5</sup> Article 72, paragraph 3, read: The High Contracting Parties shall report to the depositary of the Conventions and to the International Committee of the Red Cross at intervals of four years on the measures they have taken in accordance with their obligations under this article.

<sup>6</sup> See note 3.

<sup>7</sup> K. Drzewicki, 1989, 127, *IRRC*, No. 255, November-December 1986, p. 346.

The ICRC followed up on this Resolution by requesting States parties and National Societies to inform the ICRC on the measures being taken to fulfil obligations stemming from the Conventions and, where applicable, from one or both Protocols. 62 Governments and 30 National Societies replied to the 160 letters sent to governments, but only a few sent substantive answers. As a result, proposals were made to States parties and National Societies on possible follow-up that could be given to the ICRC's move. One of these proposals was to institute a system of periodic reporting. States would submit initial reports on all measures adopted or being examined, and updates at regular intervals. The reports and the information contained could be assessed, by the ICRC with the help of specialists on different existing legal systems.<sup>8</sup> In all, 24 States and 7 National Societies reacted to this letter. The ICRC also drew up a detailed list of measures to be taken to fulfil the obligations under the Conventions and the Protocol, sent it to States parties and National Societies and published it.

## 1.1 Conclusion

It is not yet possible to speak of a reporting system under humanitarian law. The efforts that have been undertaken by the ICRC have an *ad hoc* character, although they are based on the mandate of Resolution V of 1986, and no discussion with the governments was possible since the 1991 International Conference had to be postponed.

However, governments, in the Final Declaration of the International Conference for the Protection of War Victims in 1993, reaffirmed:

“... the necessity to make the implementation of international humanitarian law more effective. In this spirit, we call upon the Swiss Government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with that law,...”.

This group of experts will convene in January 1995 for the first and only time.

This study further examines possibilities for reporting procedures, with a view to identifying a cost-effective reporting system appropriate to the characteristics of international humanitarian treaty law. Accordingly, this study will focus on the practical aspects of reporting systems used by different international organizations.

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<sup>8</sup> *Implementation of International Humanitarian Law, National Measures*, document drawn up by the ICRC (Doc. 1991 C.I/4.1/1), Geneva, 1991, 7-8.

## CHAPTER 2

### MONITORING OF UNITED NATIONS CONVENTIONS ON HUMAN RIGHTS

Within the United Nations framework, there are several International Human Rights Conventions. To supervise, investigate and monitor the implementation of the provisions of international legal instruments and standards, several mechanisms are used, both treaty-based and non-treaty-based. This paper deals only with treaty-based mechanisms. These are:

- (a) reporting procedures;
- (b) inquiry procedures;<sup>9</sup>
- (c) inter-state complaints;<sup>10</sup>
- (d) communications procedures.<sup>11</sup>

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<sup>9</sup> The Convention against Torture has an optional *inquiry procedure* under Article 20. If it appears to the Committee that torture is being systematically practised in the territory of a State, the Committee invites that State to cooperate in its examination of the information and, to this end, the Committee may designate one or more of its members to make a confidential inquiry, which may include a visit to its territory, and hearing of witnesses. The findings are submitted to the Committee, which transmits them, together with its own comments or suggestions, to the State party. The Committee may also decide to request additional information, either from the representatives of the State concerned or from governmental and non-governmental organizations, as well as individuals, for the purpose of obtaining further elements on which to form an opinion. It invites that State to inform the Committee of actions it has taken with regard to the Committee's findings. After all the proceedings regarding an inquiry have been completed, the Committee may decide to include a summary account of the results of the proceedings in its annual report. Only at that stage is the work of the Committee made public. An inquiry was conducted on Turkey. The procedure was started on the basis of an Amnesty International report. At present another inquiry procedure has been initiated.

<sup>10</sup> Three instruments provide for an *inter-state complaints* procedure according to which States parties recognize the competence of a Committee to receive and consider communications from a State party claiming that another State party is not fulfilling its obligations under the instrument concerned: (a) the International Covenant on Civil and Political Rights, Article 41 (optional); 43 States have made the declaration; (b) the Convention on the Elimination of All Forms of Racial Discrimination, Articles 11, 12 and 13 (obligatory); (c) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 21 (optional); 36 State parties have made the declaration. To date, these procedures have not yet been resorted to.

<sup>11</sup> The *communications procedure* is optional under the First Optional Protocol to the Covenant on Civil and Political Rights, under Article 14 of CERD and under Article 22 of CAT (35 States accepted). A fourth procedure is envisaged under Article 77 of the Migrant Workers Convention, which is not yet in force. Individuals subject to the jurisdiction of States parties can complain to the Committee on the violations of their rights. The Communications Branch of the United Nations Centre of Human Rights makes a preliminary analysis of the Communication to decide to which Committee the communication should be submitted. Communications complaining only of torture or racial discrimination are more rare. Most complaints contain an element of civil and political rights. For that reason, most complaints are directed to the Human Rights Committee.

The five United Nations Conventions on Human Rights, with State **reporting procedures** and a secretariat in Geneva, which will be treated in this paper are:

1. the International Covenant on Civil and Political Rights and its Optional Protocol (HRC);
2. the International Covenant on Economic, Social and Cultural Rights (CESCR);
3. the Convention on the Rights of the Child (CRC);
4. the Convention on Elimination of All Forms of Racial Discrimination (CERD);
5. the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Three Conventions will not be discussed extensively in this paper. The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), whose secretariat is in New York. The International Convention on the Suppression and Punishment of the Crime of *Apartheid* hardly functions, and in Chapter 9 a lesson is drawn from it. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not yet entered into force.

## 2.1 Reporting procedures under the Conventions

In general, all state reporting systems of the Human Rights Conventions follow similar procedures. Within one or two years after ratification, a State party has to submit an **initial report** and thereafter every four or five years a **periodic report**.

The reports are submitted to a monitoring body of 10 to 18 independent experts, serving in their personal capacity. This body is usually called a Committee. To ensure that all principal legal systems are represented, the Committee members are chosen on the basis of equitable geographical distribution.<sup>12</sup> A Committee member is responsible for analysing the report from a certain State, for preparing questions and for leading the discussion when its report is taken up for consideration by the Committee.

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<sup>12</sup> The members are elected by a secret vote, so it is possible that equitable geographical distribution is not realized.



All Committees have established **guidelines** regarding the form and contents of initial and periodic reports. Every report should be preceded by a “**core document**”. This document submits basic information on the conditions and circumstances in a State. A core document, once prepared and updated, can be used for all reports under the UN human rights system to facilitate the reporting.<sup>13</sup> As yet, there are only 35 States who have produced a core document.

For some Committees, before a report is considered, a list of questions is prepared by a pre-sessional **working group**, to give a State a better chance to participate constructively in the dialogue with the Committee, and to identify in advance the questions that might most usefully be discussed with the representatives of the reporting States. The list is sent directly to a representative of the State concerned. States parties are asked to provide the replies to the list of issues in writing, if possible, and to do so sufficiently in advance of the session at which their respective reports are to be considered, in order to enable translation and distribution to the members of the Committee. It is made clear that the list is not exhaustive.

The State report is then presented to a Committee in a public session by a team of representatives from the reporting government, which is questioned on specific issues and situations. In their questions and comments, the Committee members may take into account information supplied by other sources than the state report, for example, information from other UN bodies, other international organizations or NGOs. The Committee on the Rights of the Child works with an NGO coordinator, who has also published a handbook for NGOs on how to help the reporting system under the CRC. A special NGO called ARIS (Anti-Racism Information Service)<sup>14</sup> helps other human-rights groups and individuals by giving information on CERD, notifying the appropriate organs when their country will be discussed, and sending press releases immediately after the discussion in CERD to the major news media in the countries concerned.

After the presentation of the State report and deliberations by the Committee, suggestions, concluding observations or general recommendations are adopted. They are drafted by the designated country rapporteur, with the help of the Secretariat. The text reflects the views of the Committee as a whole. The form of the suggestions is according to the guidelines established by the Human Rights Committee.<sup>15</sup> The practice of adopting concrete recommendations has only recently developed.

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<sup>13</sup> U.N. Doc. CAT/C/X/Misc.3/Rev.1.

<sup>14</sup> There are 7 members of CERD in the ARIS Advisory Committee.

<sup>15</sup> See note 13.

In the concluding observations and general recommendations, the Committee draws attention to the progress achieved since examination of the previous report and expresses its concern over factors and difficulties impeding the application of the provisions of the Convention and subjects of concern. Most importantly, the concluding observations contain specific suggestions and recommendations on steps which the government should take to implement the treaty in question more effectively.

The observations, which are made public after a short delay, serve as a suggested "programme of action" to be undertaken by the State before its next report and are given as wide a circulation as possible. It is now much easier for States to follow up the suggestions of a Committee and it is also much easier for NGOs and other pressure bodies to confront governments with certain shortcomings. Each Committee reports on its findings to the Economic and Social Council or the General Assembly.

The follow-up to a report can take different forms: States that have requested help can be given **advisory services** and/or **technical assistance**. The CRC is empowered to transmit, as it may consider appropriate, to the specialized agencies and other competent bodies, any reports from States parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions. CERD can send a **mission** of experts to a State, between reports, to provide technical assistance in preparing the next report and in devising means to eliminate racial discrimination; it may also help to prompt a dialogue for a peaceful solution of issues concerning racial discrimination.<sup>16</sup>

Under the CESC, when a State is very long overdue with its reports, or if a serious situation gives rise to concern, the State is requested to accept a mission consisting of 1 or 2 members of the Committee, to collect information, to continue a constructive dialogue with the State party, and to enable it to prepare the next report. The decision to send a mission is taken only after the Committee has satisfied itself that no other adequate approach is available and that the information in its possession warrants such an approach. The Committee identifies specific issues in relation to which the representatives have to gather information from all available sources.<sup>17</sup> Missions have been requested to the Dominican Republic twice, and to Panama and the Philippines once each. These States have so far rejected every offer of assistance, but the dialogue is kept open.

A Committee may bring a State under review, or keep it under continuing review, by requesting it for further or **additional information**. Such a request

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<sup>16</sup> See note 13.

<sup>17</sup> See note 13.

may also be applied in cases where a State has fallen far behind in its reporting obligations. This procedure has been recently developed by a number of Committees in an effort to respond to serious human rights situations, with a view to preventing further violations, particularly where there is a risk of escalating violence or armed conflict.

The **urgent action** procedure is used by the CRC and the HRC in relation to a State party in a serious situation, when there is a risk of further violence. The situation has to be brought up by a UN body or another competent body or *ex officio* by the Committee itself. The Committee considers the urgent action procedure as part of the reporting system. So far, all States have complied with the Committee's request and have participated in consideration of the report requested under an urgent action procedure.

A Committee can only use persuasion to compel States to submit their **overdue reports**. When a report is four to six months overdue, a reminder is sent to the Minister of Foreign Affairs, after which the Chairperson of the relevant Committee sends a personal letter to the Minister of Foreign Affairs. At the same time or a little later, Committee members use their personal contacts with state representatives to urge them to submit a report. CESCR, CERD and the HRC have developed a special practice in dealing with States whose reports are long overdue. It has been proposed that States whose reports are more than 4/5 years overdue might be reviewed on implementation of the Convention in the absence of their reports, and invited to send representatives to participate in the relevant meetings. States who decide to send in their reports after such a long time can submit their initial and second reports in one document. In addition, States with long overdue reports are invited to avail themselves of the technical assistance of the UN Centre for Human Rights. As a result of this change in policy, two States, whose reports were long overdue, have asked for advisory services and technical assistance in preparing the reports. As a first step, their representatives will be sent to an international course specifically aimed at training government officials in the mandatory reporting system, to be held at the ILO's International Training Centre in Turin in November 1994, within the context of the Fellowship Programme of the Centre for Human Rights.<sup>18</sup>

## 2.2 Functions of the Secretariat

Each Committee is serviced by the International Instruments Branch of the United Nations Centre for Human Rights in Geneva. In principle, every Con-

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<sup>18</sup> Based on the draft annual report of the 12th session in April 1994, CAT/C/XII/CRP.1/Add.3.

vention has a Secretariat comprising 2 professionals (graded P4 and P2) and 1 general-service staff member. In practice, however, a Convention is serviced by 1 professional and a (part-time) secretary.

The Secretariat **organizes** the sessions of the Treaty bodies. It does this by sending *notes verbales* to States parties: to request reports, to remind States that they have to submit reports, and to invite States to the sessions. The Secretariat also prepares the reports, the documents for the sessions and the documents containing States' reports. This entails reading, adding references, giving symbol numbers, translating and distributing. It likewise organizes the days of general discussion for the CESCR and the CRC and coordinates the sessions calendar. It keeps track of the status of the Conventions and the reservations, lists the state reports received, and compiles the relevant international instruments. When a Committee is in session, all the servicing staff of the other Committees help to prepare drafts, answer questions in the sessions and assist in any way that is necessary.

On a substantive level, the Secretariat offers service to Committee members by collecting information on countries, analysing the information, asking UNICEF, the ILO, NGOs and other relevant organizations, even regional or local bodies, for additional information. It researches academic articles and consults with experts. When a State party needs assistance with the preparation of a report, it is the Secretariat that provides this help. It drafts the list of issues that is the guideline for every Committee meeting and the agenda, as well as the general comments, suggestions, general recommendations and concluding observations. It drafts the annual or bi-annual report to the General Assembly, also the reports to ECOSOC and the Commission. In addition, the Secretariat prepares reports on actions taken pursuant to the decisions adopted by Committees at previous sessions.<sup>19</sup> The Secretariats of the CRC and of the CESCR produce country analyses and country files.

## 2.3 Reservations concerning the system

The reporting systems relating to UN human rights give rise to the following observations:

- (1) The number of overdue reports will not decrease as long as the capacity of the Secretariat to process reports is not increased.<sup>20</sup>

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<sup>19</sup> Resolution A/47/41, page 2 paras 2 to 8.

<sup>20</sup> As long as this is the case the Committees will not put overmuch pressure on States to submit their reports.

- (2) There is reporting fatigue, since States sometimes have to report up to six times a year on closely related fields.
- (3) The effectiveness of the system is impeded by the absence of a consistent follow-up procedure.
- (4) A good diplomat will be able to explain away all allegations of a Committee, without any relevant changes taking place in human rights within a State.
- (5) Six working languages constitute a heavy burden for the UN.
- (6) The Committee's experts are not paid for their services, apart from travel and living expenses. So far this has not been a problem, but when Committee sessions take up more than three months a year a normal salary may be required.<sup>21</sup>

## 2.4 Concluding remarks

States should see the reporting procedure as a useful way of taking stock, by assembling national experts and evaluating progress. The reporting systems are undergoing major changes now that the Cold War has ended: for many years the East-West controversy paralysed the decisiveness of the Committees.

The reporting procedure is a door towards advisory services and technical assistance, provided by the Centre for Human Rights. This is true, for example, for Vietnam, which changed its juvenile justice system with international technical assistance, on the recommendation of the Committee on the Rights of the Child.

The experiences of the CERD and the CAT demonstrate that it is not wise to make the funding of the Committees dependent upon the States parties, since it has led to curtailment of Committee sessions, due to the non-compliance of some States parties with their financial obligations. Instead, complete funding should come from the regular budget of the United Nations.

From the CERD it can also be learned that it is best to keep reporting procedures as flexible as possible. A rigid system has a tendency to become obsolete.<sup>22</sup>

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<sup>21</sup> The experts for the Council of Europe are paid at D1/D2 level.

<sup>22</sup> CERD has a gentleman's agreement with the States parties that one report per 4 years is enough, not, as is stated in the Convention, every two years (Article 9, para. 1). A brief updating report can be submitted in the intervening years.

The system whereby a permanent body is installed, to be convened when needed, functions much better than an *ad hoc* body.<sup>23</sup>

For the CRC, it is possible to note progress in legislation, in coordination mechanisms put in place, and in a certain didactic effect.

A Committee is not a tribunal. It neither passes judgement nor does it condemn. The purpose of the presentation and the examination of the report is to start a constructive dialogue with the reporting State. The Committee wants to establish the *de jure* and the *de facto* situation in the reporting State, which it endeavours to assist to abide by the obligations assumed with ratification of or accession to the Convention. Committees therefore expect their observations to be duly transmitted by the representatives of the reporting State participating in the dialogue to all relevant national authorities involved in implementation of the Conventions.<sup>24</sup>

### CHAPTER 3

## ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is the main forum for monitoring economic trends in its 25 member countries, representing the free-market economies of North America, Western Europe and the Pacific. The aim of the OECD is to achieve the highest sustainable level of economic growth and employment by coordination of national policies and by stimulation and harmonization of aid to developing countries. Member countries report constantly on trends and data in their territories. On the basis of analyses of these data, they coordinate their policies. The procedure of sharing

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<sup>23</sup> The Group of Three, established by the Convention against Apartheid is an *ad hoc* body and meets only once every 2 years. The problem with such an *ad hoc* group is that between meetings there is no body to take any action. This has become painfully obvious during the recent elections in South Africa, when the body could not convene, because at that time the Group of Three did not have any members.

<sup>24</sup> — *Manual on Human Rights Reporting*, U.N. Doc. HR/PUB/91/1, (1991), 187-188.

— *Orientation Manual, The U.N. Commission on Human Rights, its Sub-Commission, and related procedures*, Minnesota Advocates for Human Rights (1993).

— *A Guide for Non-Governmental Organizations Reporting to the Committee on the Rights of the Child*, The NGO Group for the Convention on the Rights of the Child (1994).

observations and information is a slow one, but after 33 years there are enough results for the member countries not to want to change the system.

### 3.1 Organization of the OECD

The main body of the OECD is the **Council**, assisted by the **Executive Committee**. In 150 specialized **committees, expert groups and working parties**, the major part of the Organization's work is carried out. There are, moreover, 5 **semi-autonomous bodies** within the framework of the OECD. These bodies are, as a rule, composed of representatives either from the capitals or from the permanent delegations to the OECD. All these bodies are serviced by the international **Secretariat**, headed by the Secretary-General of the OECD. This Secretariat forms the major part of the OECD.

Member countries meet every 2 weeks at ambassador level in the **Council**. Each member country maintains a permanent diplomatic delegation headed by an ambassador. The ambassadors are appointed especially to the OECD; delegations vary in size from 5 diplomats (UK) to more than 60 (Japan).

The Council meets once a year on ministerial level with the Ministers of Economic Affairs and of Foreign Affairs. Once a year there is also a high-level<sup>25</sup> meeting on development. Every 2 years there is a high-level meeting on a subject to which a Committee wants to focus the attention of the member States. The Council, which operates on the principle of consensus, produces Decisions (legally binding on member countries) and Recommendations (expressions of political will). Member countries implement the Decisions and Recommendations in their national policies.

There are **committees** on Economic Policy, on Economic and Development Review, on Development Assistance, on Trade, Capital Movements and Invisible Transactions, and on 20 other subjects.

The delegates to the committees, working parties and expert groups all require statistical and other background papers. The OECD therefore gathers these data and policy information and standardizes them. It makes them available to member countries and to the public in an internationally comparable form. On the basis of these data, suggestions are made for policies in a member country. After a certain period the member country will make an assessment report on

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<sup>25</sup> High-level, because not every country has a separate ministry for development.

the results of the applied policy. Committees do not have official rules of procedure, they have only unofficial working methods, which have developed over the years; their unofficial nature makes the committees very flexible.

Of the **various bodies**, the Development Assistance Committee is the most interesting for the ICRC, since last year it included in its research some observations on landmines, which they had conducted with the help of the ICRC.

The staff of the **Secretariat**, which uses 2 official languages, French and English, is drawn from all member countries. Traditionally, the upper echelons of the OECD are geographically distributed, but lower down in the organization this is not the case. The Secretariat disseminates and analyses reports. It organizes 4,000 meetings a year to discuss the reports. The Secretariat, based in Paris, consists of 1491 people (829 at the professional level) and has an annual budget of FFR 1,453,006,097 (1992). The Secretariat is divided into ten specialized Directorates, corresponding broadly to the principal committees, which themselves mirror the main departments of national governments.<sup>26</sup>

## 3.2 Reporting mechanisms

Reporting systems have been developed in most bodies of the OECD. The three main reporting systems of the OECD will be described and the reporting mechanism of one body will be studied in detail, following the same method as for the United Nations Human Rights Treaties.

The reports to the **Economic and Development Review Committee** (EDRC), to the **Development Assistance Committee** (DAC) and to the **Committee on Competition, Law and Policy** (CCLP) are identified as the three main reporting procedures of the OECD. Once every 4 years an environmental analysis is also requested.<sup>27</sup>

The reporting procedures for these three Committees are similar. For each country, reports are prepared by three teams: the Secretariat of the OECD; the country itself; and the experts or examiners, who are people from two other countries designated to make a report on the third country. These three reports are combined into one report by a major economist of the OECD, and the

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<sup>26</sup> From the leaflet, *OECD in Brief*. Further information was obtained from interviews with Mrs. Ballivet, of the Geneva office of the OECD, and from *The Annual Report of the OECD 1992*.

<sup>27</sup> By Mrs. Ballivet, of the Geneva Office of the OECD.



combined report is then presented to the Committee, which discusses it and publishes a summary.

Usually two or three countries are treated by one major economist, aided by approximately 10 junior economists. Such a cluster of economists is called a desk. There are 12 desks for EDRC and 12 desks for DAC. CCLP works with heads of division and 7 major economists. There are many OECD experts who give advice on specific areas touched upon by the reports.

The EDRC monitors and assesses economic policies of individual countries on an annual basis. It is a multilateral surveillance process covering both macroeconomic and microeconomic policy issues. This annual examination is the main instrument for the Organization's surveillance of overall economic policies in each member country. Special issues in specific countries are also reviewed. Exceptionally, surveys of Non-Member States are conducted, e.g., when such countries wish to become OECD members. The reports are published in the *OECD Economic Surveys*. In 1994, 8 surveys were published, in 1993, there were 15, making 23 in all, those for Belgium and Luxembourg being published together. Surveys were also published of "Partners in Transition": for Poland in 1992; Hungary in 1993 and the Czech and Slovak Republics in 1994. A non-member survey was also made of Mexico in 1992, before Mexico became a full member of the OECD.

In the Committee, questions can be asked on the functioning of different economic systems in a country. For example, Switzerland is always asked to explain its financial system.

Once every two years a Member State has to report to the CCLP. This Committee reviews developments in competition policy, law and jurisprudence in OECD member countries at each of its semi-annual meetings. During 1989/90 and 1990/91, 20 and 19 reports, respectively, were reviewed. The country reports are made available to the public by the individual governments. The summary is made available to the public on the authority of the Secretary-General of the OECD.

Every 2 years, the DAC reviews the quantity and quality of development aid given by a country to other countries. There are no fixed dates of publication and there is no list of reports that have been published. This makes it impossible, at present, to give more details on this reporting procedure.

The reporting mechanism of the **Financial Action Task Force** (FATF) will be examined in detail. The FATF is not a real OECD body, but was established by the G7 Economic Summit in Paris in 1989. It consists of representatives of States that are interested in decisive action against the drug problem and that

therefore wish to examine measures to combat money laundering. The secretariat is provided by the OECD, though not all members of the FATF are OECD members.

In April 1990, the FATF issued a report with 40 Recommendations. Evaluation of the progress made by FATF members in implementing the 40 Recommendations is the only area relevant to this paper of the three main areas of work on which the Task Force has focused its attention. The Task Force monitors the performance of its members using two methods of reporting, agreed in 1991: annual self-assessment by member countries, and a mutual evaluation process.

Self-assessment by member countries is conducted on the basis of questionnaires dealing with the Recommendations on legal and financial matters. These questionnaires have become specific and detailed, inviting countries to supply appropriate narrative information. Most members take the opportunity to do so. The FATF Secretariat draws up two grids of the responses, showing the state of implementation of the Recommendations. These results are then discussed in working groups. Although there inevitably remain some differences in interpretation of some of the questions, the exercise now provides a generally objective analysis of the performance of members in implementing the 40 Recommendations.

The **mutual examination process** has already examined 12 countries. The goal is to examine each member once, over the period 1991-1994. The procedure is as follows: the chairman of the FATF selects the FATF members to be examined in the coming year. In consultation with the country to be examined, the Chairman of the FATF selects at least three examiners (country representatives), taking into account the expertise and the background of the examiners and their countries. Each evaluation team should include examiners from at least two different countries.

First, all relevant quantitative and qualitative information is assembled and processed in an analytical assessment, in order to secure an objective assessment of the situation in a given country. This is achieved on the basis of the information provided by the examined country itself, through its response to a comprehensive and standardized *mutual evaluation questionnaire*. The information-gathering process is completed through a variety of interviews carried out by the examiners during an *on-site visit*. Subsequently, the Secretariat is in a position to write a confidential draft report in the light of the examiners' assessments and under their responsibility.

The draft report contains a tentative evaluation, which is submitted to the examined country, and then discussed in a joint meeting of the legal and financial

working groups. The examiners present their report to the joint group, and other FATF members are selected to lead the discussion. The purpose of this phase is to verify the validity of the facts and the state of implementation. This intensive peer review is a necessary means for reaching a clear and unbiased assessment of where the country stands and of the areas in which further efforts are warranted. The report is then revised as necessary by the Secretariat in the light of these discussions, and the conclusions are reflected in the final report, to be approved by the FATF plenary. The report itself remains confidential, but an executive summary thereof is prepared and included in the annual report of the FATF.

This is the reporting mechanism for the FATF. To preserve the informality of the FATF, membership will not be increased.

### **3.3 Conclusion**

In principle, the reporting procedures of the OECD are voluntary. However, the Organization admits a State only after it has made sure that it fits into the "working tradition/atmosphere" of the OECD. This means that failure to report as agreed is frowned upon. Compliance with the reporting procedure is guaranteed not by official regulations, but by unofficial peer pressure. When a member country fails to produce an expected assessment report, the Council will continue to ask for the reasons.

States also send all statistical information produced by their ministries to the OECD, which processes it. Non-compliance, therefore, cannot be hidden. Furthermore, field missions can be sent to a country, and the OECD sponsors research on specific topics (e.g., agriculture) in a Member State. In this way the OECD remains constantly aware of the most recent trends and the best possible reactions to them.

The ultimate aim of the reports is economic development, which is not a sensitive issue. Every country wants to learn more on how to achieve economic growth, and information is shared willingly. Policy meetings are conducted at ministerial level or just below. This makes for easy implementation, when decisions have been taken.

Meetings are in general confidential; only some reports of committees are published. The results of the reporting procedures are usually stated only in general terms. The confidentiality encourages openness in States that might not want to share some policies with the press. The OECD does not wish States to report when there are elections, since in the past OECD reports have been used in campaigns, a practice of which the Organization strongly disapproves.

The OECD puts a lot of effort into a small number of countries. It works in a very concentrated field, not a broad one such as that of the Human Rights Conventions. It works closely, when it so chooses, with all kinds of related international organizations. It does not hesitate to establish regional units to keep the original entity small and workable. This might explain the 150 committees, working groups and agencies that form part of the OECD.

The reporting procedures for the OECD appear, at first glance, to be extremely successful in their goal of implementing the planned recommendations. However, some comment is called for. First, the recommendations that the OECD makes and tries to implement are usually not very far-reaching, and often States have already decided to do something about the issue. It is not really the OECD that initiates innovative actions. Second, the amount of attention focused on countries that have to report is tremendous: for each reporting country and each working group there are two procedures to check implementation, backed up by studies of the newest developments in the field and the possibility of on-site inspections. These enormous efforts explain the size of the OECD, and the size of its budget. It is an effective body, but it functions at high cost.

## CHAPTER 4

### THE INTERNATIONAL LABOUR ORGANISATION

The ILO is committed to ensuring that all human beings, irrespective of race, creed or sex, are able to pursue their material well-being and their spiritual development in conditions of freedom, dignity, economic security and equality. The ILO is a tripartite organization; States' delegations to the International Labour Conference consist of representatives of employers' and workers' organizations, as well as of governments. The Conference adopts Conventions and Recommendations to translate the constitutional objectives into more specific rules and guidelines.

The ILO has a reporting system, known as a **supervisory procedure**, and a complementary complaints system, called **special procedures**, all geared towards implementation of international labour standards.

Under the **supervisory procedure**, reports are prepared and supplied by governments, but national organizations of employers and workers are entitled (under the tripartite system) to make written observations which, together with the reports of the governments, are examined by the **Committee of Experts on the Application of Conventions and Recommendations** (CEACR). The CEACR studies annual reports under Article 22 of the ILO Constitution, on

implementation of Conventions to which States are party; under Article 19, on the implementation of Conventions and Recommendations that are not ratified by States but adopted by the Conference; and under Article 35, on non-metropolitan territories.

The CEARC consists of 20 independent persons nominated in their personal capacity by the Director-General and appointed by the Governing Body of the ILO. The CEARC meets once a year, in private sessions, and conducts entirely written proceedings. It is a very technical body. A report with comments is submitted to the **Committee on the Application of Conventions and Recommendations of the Conference** (CACRC), usually unanimous except for the occasional dissenting opinion. To reduce the workload of the Committees, the reporting frequency has been brought down. Most remarks are directly communicated to governments (**direct requests**) and only the most essential comments (**observations**) are put in the reports.

The CACRC plays a more political role, and discusses the findings of the CEACR. It considers breaches of the obligations by member States and possible remedies, in the presence and with the participation of representatives of the governments concerned. The CACRC is a tripartite committee, the members of which are appointed by the Conference each year. Its meetings are public, its proceedings are conducted orally, and it may hear and examine witnesses. The CACRC's terms of reference are laid down in Article 7 of the Conference Standing Orders. The CACRC concentrates now only on specific subjects and breaches. It publishes a special list showing States in which progress has been made, those in which no progress has been made, and States facing specially difficult situations.

The criterion for this reporting system is the time that has elapsed since the last report and the ratification of a Convention. Flagrant injustices brought to the attention of the ILO may give rise to a request for an additional report from the relevant government.

There are now 6,000 ratifications of the Conventions and the supervisory bodies have registered more than 2,000 cases of progress, i.e., cases of national legislation and practice being changed to meet the requirements of a ratified Convention as a result of comments by the supervisory bodies.

**One example of special procedures** is the **representation procedure**, where an employers' or workers' organization may submit allegations of failure by a Member of the Organisation to adopt satisfactory measures within its legal system for the application of a Convention to which it is a party. If the representation meets the formal requirements of admissibility, it is sent to the government concerned and the case is submitted for examination by a tripartite

committee set up for the purpose within the Governing Body. Its conclusions and recommendations may be published.

The **complaints procedure** is more elaborate than the representation procedure in terms of the rules of the Constitution that govern it. Under this procedure, any member State of the ILO may file a complaint to the Office against another member which, in its opinion, has not adopted the necessary measures to give proper effect to a Convention ratified by both members. This procedure provides all the guarantees of a regular procedure. It should be pointed out that the complaints procedure may also be initiated by the Governing Body on its own initiative, or by a delegate to the Conference.

Complaints are referred to commissions of inquiry appointed specifically for each case and composed of independent persons of international repute. The conclusions and recommendations of a commission are published in the ILO Official Bulletin and may be challenged before the International Court of Justice, whose ruling is final. If a Member fails within the prescribed time-limit to give effect to the recommendations of the commission of inquiry or the decisions of the International Court of Justice, the Governing Body may recommend to the Conference any measures it deems necessary to ensure that the recommendations are observed. The government against which the complaint is filed may at any time inform the Governing Body that it has taken the necessary measures to implement the recommendations of the commission of inquiry or the Court's decision. In practice, no economic or other sanctions have been applied in the context of this procedure.

There is also a special procedure for **complaints concerning freedom of association**, which rests on the fundamental principles deriving from the Constitution. There are two supervisory bodies for this special procedure, the Fact-Finding and Conciliation Commission on Freedom of Association and the Committee on Freedom of Association, a tripartite committee that has become the centre of activity. A special procedure that has never yet functioned deals with equal treatment.

## 4.1 Conclusion

The ILO is best known for its supervisory procedure. The number of reports and the willingness of States to report is impressive. On the one hand, this can be attributed to the long-standing practice of reporting, on the other hand to the tripartite system, whereby at national level the governments can be pressured into reporting, though it is not obvious how active the workers' and employers' organizations are in pressuring the governments to submit a report. It should be

noted that governments are extremely lax in meeting their obligation to send copies of their reports to the workers' and employers' organizations, and this task very often falls to the ILO.

The system has some noteworthy characteristics. The legal discussion of the reports by the CEACR is followed by a political discussion at the International Labour Conference, which draws the conclusions. The annual reports also cover unratified Conventions and Recommendations. When comments have been made on a situation in a State, the ILO will continue to enquire whether the situation has been resolved, sometimes over periods of more than 30 years.

The ILO trains government officials through seminars and informal advisory missions, among other things on the preparation of reports. The UN Committees sometimes direct government officials to the ILO training centre in Turin, as a form of technical assistance. It is unclear how useful this is, since the officials are individuals within their governments. It might be more effective to invite officials from two or more departments or ministries, so that they get to know each other and are able to combine their knowledge in a well-prepared report.

## CHAPTER 5

### UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

UNESCO has three major Conventions: the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property (1970), and the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).

#### 5.1 The 1954 Convention

The 1954 Convention was modelled on the 1949 Geneva Conventions. States undertake to **safeguard** and **respect** movable and immovable cultural property. "Safeguarding" means making preparations, in time of peace, such as the training of armed forces, marking of cultural property, inclusion in the "International Register of Cultural Property under Special Protection" kept by the Director-General for special protection. "Respect" applies in times of armed conflict, whether international or not. No military action may cause harm to cultural

property; it will be protected against thieving and plunder; and no reprisals will be conducted against it.

There are 81 States parties to the Convention and 66 States parties to its Protocol. The "International Register of Cultural Property under Special Protection" includes sites in the Netherlands, Austria, Germany and the Holy See (Vatican).

In Article 26, paragraph 2, a simple reporting system is laid down. Paragraph 1 stipulates that States shall communicate official translations of the Convention, while paragraph 2 states that every four years the States shall forward a report to the Director-General of UNESCO,

"...giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present Convention and of the Regulations for its Execution".

The Director-General has invited States to forward their reports to him on six occasions, and these reports were published in 1962, 1967, 1970, 1979, 1984 and 1989.

Germany is the only State with a 100% record (i.e., it has contributed to each of the five reports compiled and used since it ratified the Convention in 1967). Poland has submitted 5 reports out of a possible six, the Holy See, The Netherlands, Switzerland and Syria have each submitted four out of a possible six. On the other hand, 39 States have never submitted a report (though it should be noted that several of these have become parties to the Convention by accession or succession since the last compilation of national reports was prepared in 1989). It is difficult to calculate the exact number of periodic reports that should have been submitted, because of the differing rates of completion of the ratification process, but it appears that only 20% of those that should have been prepared by States parties according to the requirements of the Convention have actually been submitted.<sup>28</sup>

An analysis of informational content of the reports shows that the geographical spread of information is uneven, and that those States apparently least exposed to the danger of war, owing to their status or their geographical position, sometimes announce a multitude of measures that would be more useful in other countries.

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<sup>28</sup> P.J. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954)* (1993), 89-90.



There are several reasons why the reporting system does not function very well.<sup>29</sup> The Convention does not specify what kind of peace-time preparations are meant.<sup>30</sup>

No guidelines on the reporting procedure have been produced, also because the UNESCO Division of Physical Heritage, with a staff of three professionals, deals with the 1954 and the 1970 Conventions and 10 Recommendations.

Reports are addressed to the Director-General. There has been a proposal to establish a committee of independent experts to examine the reports and to make comments on them which are transmitted to States. So far this idea has not been put in practice.<sup>31</sup>

At times, the contents of a report have been in total contradiction with the facts observed by a rescue mission conducted by UNESCO and this has made staff wary of the truthfulness of the reports. However, no supplementary measures are taken to promote the Convention and its observance. The procedures for the "special protection list" are so stringent that States are hindered from adding sites to it. Furthermore, the procedure has been misused for political ends, and the fact that the system cannot protect itself against this has not helped.

Another criterion for the effectiveness of the Convention is its application in times of armed conflict. UNESCO can act in three ways:

- (1) Initiatives by the Director-General: Croatia; El Salvador/Honduras, 1969; India/Pakistan, 1971; Greece/Turkey on Cyprus, 1974; Iran/Iraq 1980. In 2 cases the authorities responded that they would honour their obligations. Nigeria, faced with an internal conflict in 1968, responded that it observed the Conventions.
- (2) Technical cooperation: Kampuchea; Israel/Egypt 1957; Cambodia 1970; Tyre 1982;
- (3) The establishment of control procedures such as Protecting Powers and/or a Commissioner-General (used once in a Israel/Arab conflict).

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<sup>29</sup> K.J. Partsch, in *Istituto internazionale di diritto umanitario, La protezione internazionale dei beni culturali/The international protection of cultural property/ La protection internationale des biens culturels*, "Acts of the Symposium organized on the occasion of the 30th Anniversary of the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict", Rome (1986), 196.

<sup>30</sup> See note 28.

<sup>31</sup> See note 29.

In view of the extent of cultural heritage threatened by armed conflicts, this is not a long list.

Until the Gulf War the 1954 Convention was considered to be more or less dormant. Since then the Convention has received more attention, also because it has been invoked in the conflict in former Yugoslavia. However, there has been no noticeable effect on the submission of reports by States, since so far, only six States responded to the latest request to report (deadline 1st of June 1994).

## 5.2 The 1970 Convention

The 1970 Convention applies in peacetime and in times of conflict, but to movable property only. Each State party establishes regulations regarding operations that affect property situated in its territory and decides which transfers of ownership, import or export are legal and which are not legal. There are 77 States parties to this Convention.

Under Article 16, States have to submit periodic reports on legislative and administrative provisions that they have adopted and other action that they have taken for the application of this Convention, together with details of the experience acquired in this field. The reports must be submitted to the General Conference of UNESCO, which decides the manner and the dates of submission of these reports.

Hitherto, this Convention has been dormant. Ratification has been slow, and mainly by art-exporting countries. The Executive Board of UNESCO created a Committee on Conventions and Recommendations (Resolution 104 ex. 3.3 of 1978) to examine the reports and to make comments on them which are transmitted to the States,<sup>32</sup> but because the Convention (especially core Article 3) is very vague, States do not adhere to it. The reporting procedure has for the moment been abandoned. Considering that illegal trade in and export of cultural property occupy second place in the global list of illegal activities (first place being taken by the trade in narcotics), it is clear that the need for this Convention has not disappeared.

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<sup>32</sup> Commission IV, Examination of Item 8.4, Reports of Member States on the Action Taken by Them to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Record of the General Conference, Reports, Bd.2, 24th session, Paris, 20 Oct.- 20 Nov. 1987. Report of the Committee on Conventions and Recommendations of the Executive Board on Proposals for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 22 C/93.

### 5.3 The 1972 Convention

The 1972 Convention works to limit damage to immovable natural and cultural heritage, i.e., damage not only as a result of man-made disasters (e.g., war), but also of natural disasters. To this end, the Committee for the Protection of Cultural and Natural Heritage of Outstanding Universal Value (the World Heritage Committee) was created.

This Committee established a World Heritage List and a List of World Heritage in Danger, on the basis of inventories drawn up by States parties. States can ask the Committee for information, assistance in preservation or restoration. A World Heritage Fund has also been established: this is a UNESCO trust fund financing the Convention and its organs. There are 132 States parties to the Convention, and the World Heritage List contains 411 properties (309 cultural sites, 87 natural sites and 15 mixed sites). The UNESCO World Heritage Centre and several advisory bodies (for example, international NGOs) are used to execute the Convention.

General practice is that monitoring takes place on an *ad hoc* basis, when there is a crisis. The Centre reacts to information from diverse sources, such as NGOs, States and individuals. Crises may be of various kinds, e.g., poaching in wildlife parks, military action, civil disorder, industrial development, logging, or natural disasters. A crisis may be serious or extremely serious. When the situation is **extremely serious**, experts from the World Heritage Centre are sent to investigate, if the States parties so request. One or two missions of this kind are undertaken every year. For example, the USA recently requested a mission to the Everglades. When the situation is **serious**, a report is produced by technical experts, usually those belonging to the World Conservation Union (IUCN) or to the International Council on Monuments and Sites (ICOMOS) network in the field. In both cases, the situation is verified with the State party. Replies by the States parties differ in accuracy.

The World Heritage Centre and the IUCN present reports to the World Heritage Committee. To date, 50 reports were the result of missions and 100 reports have been produced by local IUCN representatives.

In serious situations, several solutions are available, such as technical assistance (professionals, money or equipment training), and emergency relief, all funded by the World Heritage Fund with a budget of \$3,000,000 a year. The Fund also supports promotion of the Convention and training. The World Heritage Centre hopes to increase the Fund's budget five or ten fold with the help of professional fund raisers.

Another solution for a serious situation is to put a site on the List of World Heritage in Danger. At the moment there are 6 natural sites and 10 cultural sites on this list. There are 20 sites that were on the list and that have been taken off it, because the situation had improved.

The UNESCO World Heritage Centre has a staff of 22 people, of whom 10 are professionals and 12 provide support and promotion. The World Heritage Committee comprises 21 States elected by the 138 States parties to the Convention for a six-year period; every two years, one third of the States are replaced or re-elected. Once every two years there is a Conference of States parties, which reports to the General Conference of the UNESCO.

The World Heritage Centre organizes the sessions of the World Heritage Committee and of the States parties; it facilitates communications on the Convention among the States parties; it receives nominations for the World Heritage List, and sends them on to the NGOs who make the actual technical evaluation.

The World Heritage Committee meets once a year in December, while the Bureau, five members of this Committee, meet for 6 days in Paris in between Committee sessions and for two days before each meeting. Committee members are not funded, since they are State representatives, unless they come from a developing country, when the World Heritage Fund can grant them a daily subsistence allowance.

Under Article 29 of the Convention, the States parties and the Committee must submit reports to the General Conference regarding the measures they have taken and the experience they have gathered. Systematic reporting is something that has not been practised for over ten years, but recently steps have been undertaken to revive the procedure. Three kinds of monitoring are envisaged:

- (1) a self-evaluating report produced every 4 to 5 years by the State parties, with the help of outside observers;
- (2) a reactive monitoring procedure like the *ad hoc* system currently functioning; and
- (3) an administrative reporting procedure that keeps track of the follow-up given to decisions by the Committee.

## 5.4 Conclusion

The 1954 Convention and the 1970 Convention reporting systems are, for various reasons, to a large extent inactive. The 1972 Convention can be considered a success, with more and more sites placed under its protective provisions,

but its reporting procedure does not function adequately either, due to lack of attention, of personnel and of funding.

## CHAPTER 6

### THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

The purpose of the WIPO is the promotion of respect for and the protection and use of intellectual property through cooperation among States. Its main activities consist in establishing international norms and standards in the field of intellectual property, especially through international treaties or model laws; administering treaties that embody such norms and standards, also treaties that facilitate the filing of applications for the protection of inventions, trademarks and industrial designs; and providing information on industrial property, especially the legal-technical information contained in patent documents and in the International Register of Trademarks. The WIPO also carries out a substantial programme of legal and technical assistance to developing countries and countries in transition to a market economy.

The most important WIPO treaties are the Paris Convention for the Protection of Industrial Property (1883) and the Bern Convention for the Protection of Literary and Artistic Works (1971) (Paris and Bern Conventions). For a State to become a party to one of the Conventions, its national laws on the protection of industrial property (Paris) or on copyrights (Bern) must comply, largely, with the said Conventions. The incentive for States to become party is the fact that their national rights are protected in all countries party to this Convention. There are 106 States party to the Bern Convention and 120 States party to the Paris Convention, while 147 States are members of the WIPO.

A State sends a draft law to the International Bureau of the WIPO, which makes comments and recommendations on the compatibility of the law with the Convention. The State then revises the draft until the law is compatible and the State can become party to the Convention. In the Copyright Department, some 10 professionals and 3 or 4 secretaries and, in the Industrial Property Division, some 15 professionals and 6 or 7 secretaries deal with draft laws. Revised drafts may be produced by the States or by the WIPO, and revision may be done in the WIPO office in Geneva or by missions sent to States.

There are two other means of implementing the Conventions. Every two years a circular letter is sent to Member States, with a request for information on new laws. Approximately 60% of the States respond to these requests.<sup>33</sup> It

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<sup>33</sup> From an interview with Mr Eckstein, WIPO Geneva.

is also possible that a State already party to a Convention wishes to change obsolete laws and asks the WIPO for advice.

The WIPO has an extensive mechanism for helping States, at their request, to implement the intellectual property Conventions they have signed. The laws have to be constantly updated, because the Conventions change regularly. This aspect of the work of the WIPO is the responsibility of the Development Cooperation Department, which assists in setting standards and in changing laws and institutions in countries. It has regional bureaus in Geneva (for Africa, Asia and Eastern Europe, for example), which have already provided much legal advice to developing countries and are now concentrating on the former socialist countries in Central and Eastern Europe.

The WIPO works with sponsored NGOs. ATRIP (Association for Teaching and Research of Intellectual Property) is an NGO that organizes lectures, meetings and fora. Close contact is also kept with universities.

The WIPO has no complaints procedure. This is one of the reasons for US criticism of the WIPO. Some of the WIPO mandates appear likely to be transferred to the new World Trade Organization (WTO), and some WIPO operations will then be terminated. The GATT (General Agreement on Tariffs and Trade), the predecessor to the WTO, has an enforcement system, the Treaty on the Settlement of Disputes: this works with panels of independent experts who make a report on a given situation; a follow-up report, describing how the State reacts to the first report, is sent to the Assembly. The WIPO has a similar system ready in draft form.

Most of the work of the WIPO consists in registration of trademarks under the industrial-property Conventions, work to which 67% of the staff and thus of the staff budget are allocated. Under the internal budget, the WIPO is spending Sfr. 1,915,000 in 1994 on setting standards and procedures for the protection and enforcement of intellectual property rights. Probably the real cost is higher, since the budget is subdivided into various activities that might turn out, on closer study, to be related to implementation.

The WIPO charges fees for helping industries to protect their trademarks under the national laws of countries. Although these fees are sufficient to cover WIPO expenditure Member States have insisted that they wish to continue to pay contributions, in order to be able to exert control over the organization. The Patent Cooperation Treaty Section is the department that helps industries to protect their patents in foreign countries; it is paid by these industries for its services. The WIPO consistently balances its budget.

*(To be continued)*

### ***BEFORE "GENEVA" LAW***

## **A British surgeon in the Crimean War\***

**by Hilaire McCoubrey**

It is well known that modern "Geneva" international humanitarian law has its origins in the impartial rescue and relief work undertaken by Henry Dunant in June 1859 for the wounded soldiers abandoned on the battlefield at Solferino and the proposals made thereafter in his book "A Memory of Solferino". Henry Dunant's initiative led to the establishment of the International Red Cross Movement and the conclusion of the initial Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, signed in 1864. These humanitarian developments were, by 1859, sorely needed. The first half of the nineteenth century had seen an increase in the scale of warfare and with it a combination of incapacity and unconcern in relation to the wounded and war victims in general. Hence the scenes which so horrified Dunant as he crossed the battlefield at Solferino. The world for which Henry Dunant addressed his important work was becoming aware of the shortcomings in the treatment of the wounded and sick in armed conflict, and the shocking revelations of the Crimean War some four years earlier had played a significant part in prompting this new concern.

The official medical services in the Crimean War were not only inadequate in extent but also enmeshed in bureaucratic inefficiency and inertia, with appalling human consequences. Such efforts as were made for improvement were undertaken mainly by private persons and charitable bodies, often in the face of official hostility and obstruction. The

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\* This article is based upon documents held in the Wrench Collection in the University of Nottingham Library Department of Manuscripts. The assistance of the staff of the Department is gratefully acknowledged.

work of Florence Nightingale at the British hospital in Scutari, in particular, is seen as a major step in the development of modern nursing. Other important work included that undertaken with the French forces by the Order of St. Vincent de Paul and with the Russian army in Sevastopol by the nursing Sisters of the Order of the Exaltation of the Holy Cross.

The papers of a British military surgeon, Edward Mason Wrench, offer a valuable insight into the conditions in which the military medical services worked on the battlefields of the Crimea. These documents reveal a somewhat more complex picture than that suggested by a straightforward comparison drawn between callous official indifference and private humanitarian endeavour. The image which emerges from the Wrench papers is rather that of a conscientious surgeon well aware of the shortcomings of his service but frustrated by bureaucratic incompetence and obscurantism. These were the obstacles, which in the mid-19th century so urgently needed to be addressed, which represented a challenge for people such as Florence Nightingale and which ultimately prompted the saving initiative of Henry Dunant.

### **Edward Mason Wrench, FRCS (1833-1912)**

Edward Mason Wrench was born in Nottingham on 1 July 1833, the son of a clergyman. He received an education normal for his time and situation and underwent medical training at St. Thomas's Hospital in London. In November 1853, at the age of 20, he joined the Army Medical Service and was posted to the Crimea. Upon arrival he was put in charge of a section of the British Military Hospital located in the buildings of the Russian Military Academy in Balaclava, which was receiving wounded from the battle of Inkerman. From Wrench's account this building was far from ideal for hospital use and had anyway been severely damaged by a "hurricane" which had blown out all the windows shortly before his arrival. Subsequently, in December 1854, he was appointed Assistant Surgeon to the 34th Regiment of foot and served with them in the trenches before Redan until the fall of Sevastopol in September 1855. Subsequently Wrench served with the 12th Lancers during the "Indian Mutiny". He retired into civilian medical practice in 1862 but became a member of the volunteer reserve forces, attaining the rank of Surgeon Lieutenant Colonel with the Sherwood Foresters. He was elected President of the Midlands Branch of the British Medical Association in 1899 and died in 1912.



## Military medical facilities in the Crimean War

Wrench's first posting to the base hospital at Balaklava seems to have been marked by the same horrors which so appalled Florence Nightingale at Scutari. Forty-four years later, in his address to the Midlands Branch of the British Medical Association, he wrote:

"I had charge of from 20 to 30 patients, wounded from Inkerman, mixed with cases of cholera, dysentery, and fever. There were no beds... or proper bedding. The patients lay in their clothes on the floor, which from rain blown in through the open (i.e. broken and unrepaired) windows, and the traffic to and from the open-air latrines, was as muddy as a country road".<sup>1</sup>

In a letter written to his parents on 22 November 1854 Wrench had emphasized the difficulties involved in medical practice in such circumstances. He wrote:

"I saw Henry Ludlow today, he was disgusted with everything and wants to go back to Scutari, he has had the care of the Russian wounded... (T)hey had 130 last week, but they have all died but 60, our wounded are pretty well for out here but (much) ... worse than the worst sick in any hospital in England. We have got no opium (for pain relief), ... arrow root, tea and many other things. Which of course does not facilitate the treatment".<sup>2</sup>

This reflects a situation which was appalling even by the standards of 1854 and strikingly reminiscent of that described by Henry Dunant in Castiglione after Solferino:

"Wounds were infected by the heat and dust, by shortage of water and lack of proper care, and grew more and more painful. Foul exhalations contaminated the air, in spite of the praiseworthy attempts of the authorities to keep hospital areas in a sanitary condition".<sup>3</sup>

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<sup>1</sup> E.M. Wrench, "The lessons of the Crimean War", offprint from the *British Medical Journal*, 22 July 1899, p. 1.

<sup>2</sup> Original letter preserved in the Wrench Collection at the Department of Manuscripts and Special Collections, University of Nottingham Library.

<sup>3</sup> Henry Dunant, "A Memory of Solferino", 1862, published in English translation by the American National Red Cross, 1959, p. 31.

Wrench remarks that the "modern" concept of medical sanitation hardly existed at the time of the Crimean War, but even in its absence the conditions in which patients were kept can hardly have been considered conducive to their recovery.

If the physical surroundings were deplorable, the medical resources were hardly better. Wrench wrote:

"We were practically without medicines, the supply landed at the commencement of the campaign was exhausted, and the reserve had gone to the bottom of the sea in the wreck of ... the *Prince* so that in November 1854 even the base hospital at Balaclava was devoid of opium, quinine, ammonia, and indeed of all important drugs".<sup>4</sup>

The hospital which Wrench thus describes was, of course, primarily intended for the treatment of British casualties, notably, during his time there, from the battle of Inkerman. It may be assumed that Russian wounded would not have found any better conditions. It would certainly be unwise to apply the modern requirement contained in Article 1 of the First Geneva Convention of 1949, i.e.

"They (the protected wounded and sick) shall be treated humanely and cared for... They shall not be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created,"

retroactively to the 1850s, but any modern military medical unit run along the lines of the one in Balaclava described by Edward Wrench would manifestly be in violation of this provision. In modern terms, a rather more complex question arises in comparison with Article 10, para. 2, of 1977 Additional Protocol I. This requires that "in all circumstances" the wounded and sick

"shall be treated humanely and shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition".

The emphasis is added. The sinking of the medical supply ship *Prince* appears to have interrupted the intended supply of medicaments to the military medical facility and it might even now be possible to bring such a disaster within the limits of what is "practicable". Indeed, it is accepted that in applying the modern Geneva provision account must be taken of

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<sup>4</sup> *Ibid.*, p. 2.

the "material possibilities" of the time and place.<sup>5</sup> Although modern drug therapies are quite different from and much more effective than those available in 1854, the deficit at Balaclava was serious. They seem initially to have been the result of misfortune rather than neglect, but the efforts made to improve the situation appear to have been less than satisfactory. The material conditions in the hospital were, even by the generally poor contemporary hospital standards, medically indefensible, and would now be legally indefensible.

In field hospitals near the front line, conditions were even worse. On 13 June 1855 Wrench wrote to his family from the camp of the 34th Regiment before Sevastopol:

"Things are in an awful state up here now and the patients, poor fellows, suffer dreadfully. I have just been round my wards for the night and have two men which I don't expect to find alive in the morning, they are literally dying from exhaustion and we have nothing to give them. They are suffering from fever alike many more... and we have not got a drop of wine to give them although there is lots at Balaclava we have no means of getting it up. I managed to get some tea... and it was delightful to me how grateful the poor fellows were for it but I am sorry to say it is nearly all gone and I can get no more till I go down to Balaclava again, but which I hope to do on the first fine day".<sup>6</sup>

This letter speaks eloquently of the state of supplies to the hospital, and to the front line generally, not least by showing the dependence upon the "charitable" initiative of an individual surgeon.

If some allowance may be made for the drug supply deficit at Balaclava, the same is not true for some of the official directions with regard to treatment and especially to pain relief. Wrench remarked, also in his 1899 Presidential Address, that the Director General of the Armed Medical Services had all but banned the use of chloroform as an anaesthetic, then a recently discovered — and admittedly far from risk-free — technique. Nonetheless, in the context of "heroic" battlefield surgery, involving amputation of shattered limbs and so on, this can only

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<sup>5</sup> Y. Sandoz, C. Swinarski, B. Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva, 1987, referring to Article 10 of 1977 Additional Protocol I.

<sup>6</sup> Original letter preserved in the Wrench Collection at the Department of Manuscripts and Special Collections, University of Nottingham Library.

be seen as practically, if not indeed intentionally, cruel obscurantism. This was clearly Edward Wrench's view of the matter. The tone of outrage is obvious in his citation of the official view in the Crimea that:

"the cries of the patient undergoing an operation were satisfactory to the surgeon, as an indication that there was no fear of syncope and that the pain was a stimulant that aided recovery".<sup>7</sup>

This attitude was indeed significant, showing as it does the unconcern for the sufferings of the wounded which informed the views of a hide-bound bureaucracy. That Wrench in the field thought differently is also significant. In a letter dated 5 June 1855 and written to his brother, who was then in the course of medical training, Edward Wrench himself gave a detailed account of one of the patients under his care. This shows both Wrench's genuine concern for those under his care and the very hard lot of the disabled soldier in the mid-19th century. He stated:

"I have got a splendid case under my care just now, a man was hit in the arm 3 or 4 weeks ago, about 2 inches of the ulna was carried away and the bullet went clean through his arm... he was apparently doing well, when frightful arterial haemorrhage set in one day when I was out of camp. Our surgeon plugged the wound... and put a tourniquet on — this stopped it and for another week he did admirably. Then on Thursday last it bled again, I asked my (senior) surgeon's advice and he again recommended (the procedure adopted)... this stopped it but the wound had such an unhealthy... appearance the next morning that tying the artery was then out of the question and amputation was the only alternative. I therefore amputated his arm just above the elbow and he is now doing admirably. No arm is much better for a soldier than an arm of little use as for the first he gets a shilling a day pension (for the loss of a limb) whereas for the latter he gets nothing, but is just turned out as unfit for service, so that the old story of where in doubt operate, is doubly applicable in the army".<sup>8</sup>

The problems described here of postoperative infection in an era in which antisepsis was little known and of the limited provision made for many of the disabled are commonplace in writings of the Napoleonic Wars.<sup>9</sup> Little had changed in the forty years between 1815 and 1855.

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<sup>7</sup> E.M. Wrench, *op.cit.*, p. 8.

<sup>8</sup> Wrench Collection, University of Nottingham Library.

<sup>9</sup> The account of a Russian field hospital in 1812, during the Napoleonic Wars, given by Leo Tolstoy in his novel "War and Peace", Book X, Ch. xxxvii, emphasizes the unavoidable horror of battlefield surgery in that era.

A rather different question arises in relation to the exposure of military medical facilities to avoidable perils of conflict. A striking instance is found in Wrench's account in his 1856 Diary of an explosion in the British lines before Sevastopol in December 1855. It would seem that this was an explosion of powder in an ammunition dump rather than a result of enemy bombardment. It was nonetheless catastrophic in its effects. Wrench reported:

"I went to the scene of the explosion... the broken huts had suffered like my house<sup>10</sup> with the roofs being lifted and crushing down the walls (if they were not blown out) when they came down again. I saw a hospital roof resting on the beds..."<sup>11</sup>

Accidental explosions of ammunition have not been unknown in much later conflicts than the Crimean War. The striking aspect of the incident described by Wrench is, however, the apparent location of a field hospital in the immediate vicinity of an ammunition dump. This location was on general grounds unwise in view of the possibility, and in the case in point the reality, of accident. The danger in the event of enemy attack is also obvious; this is what Article 19 of the First Geneva Convention of 1949 has in mind in stipulating:

"The responsible authorities shall ensure that... medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety".

In modern law, an ammunition dump is clearly in itself a military objective. The collapse of military medical services during the first half of the 19th century, roughly from the French Revolutionary and Napoleonic Wars to the Franco-Austrian War, is well illustrated by the horrors experienced by Edward Wrench in the base hospital at Balaclava. This, as underlined by Wrench's comment about anaesthesia, is all the more striking in the light of the very significant medical advances which took place during the same period. It is, however, evident that many people, certainly military surgeons such as Edward Wrench, were well aware of the defects of the system in which they worked. This point is one which Wrench himself emphasized. The notion of an organization which was both incompetent and uncaring is also suggested by the loca-

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<sup>10</sup> This seems to have been a large hut built by Wrench himself. The Diary includes a drawing of this structure as a substantial one- or two-room dwelling.

<sup>11</sup> Undated entry in Wrench's summary of events at the beginning of his Diary for 1856.

tion of a hospital next to an ammunition dump. Many of these issues were to be addressed by the original Geneva Convention of 1864 and are certainly now exhaustively covered by the instruments of 1949 and 1977.

## Rescue and enemy wounded: the “Solferino” problems

The state of medical facilities and the type of treatment given, vital as these considerations are, matter little if the wounded are never brought in. This is an important consideration for all the wounded and sick but is an especially sensitive issue in relation to endeavours to rescue and treat enemy wounded. It is clear from Henry Dunant’s account of the aftermath of Solferino in 1859 that the essential problem was less one of callous abandonment, even of enemy wounded than one of incapacity and of pitifully limited resources being overwhelmed by vast numbers. Dunant wrote:

“On the Saturday the number of convoys of wounded increased to such proportions that the local authorities, the townspeople, and the troops left in Castiglione, were absolutely incapable of dealing with all the suffering”.<sup>12</sup>

It was to alleviate this appalling suffering that Henry Dunant organized his corps of volunteers to engage in both treatment and rescue. A similar crisis to that which Dunant described after Solferino existed also in the Crimea. The inadequacy of the official hospital services has already been described, but rescue work was also beset by difficulties. In his 1899 Presidential Address to the Midlands Branch of the British Medical Association, Edward Wrench gave a harrowing account of the transport of the wounded by mule train over rough tracks down to Balaclava harbour to await conveyance by ship to Scutari.

“The wretched patients (were) jolted and tossed about by the mules on the mountain paths, the short road to Balaclava... being then considered unsafe. Several mules fell, and one poor soldier recovering from a bullet through his chest was thrown out and crimsoned the snow from his re-opened wound”.<sup>13</sup>

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<sup>12</sup> Henry Dunant, *op.cit.*, (note 3), p. 30.

<sup>13</sup> E.M. Wrench, *op.cit.*, (note 3), p. 6.

Wrench added that all the men in this convoy reached Balaclava alive but were still left to lie for many hours on the wharf at Balaclava because there were no ships to transport them. It would seem that no local truces with a view to retrieval of the wounded, such as are now urged by the First Geneva Convention, Article 15, were considered, although for other purposes brief truces were arranged. Wrench notes in his summary of events for 1855 that a brief truce was arranged between the Sevastopol garrison and the besieging forces and indeed that friendly fraternization between British and Russian officers took place on this occasion. The comparison with the Christmas Day cease-fire on the western front in 1914 during the First World War is compelling. So far as collection of the wounded was concerned, it would seem that in general organizational inadequacy again defeated good intentions.

Wrench also reveals in his papers that at least some effort was made to care for enemy wounded. Reference has been made above to the provision made for the enemy wounded at Balaclava. In his Diary for 1855 Wrench refers to an incident on 22 March during the siege of Sevastopol.

"The Russians made a sortie .... In the following morning a wounded Russian ... was brought into our hospital and we amputated his leg, he did well and was eventually discharged..."<sup>14</sup>

Again during the siege he wrote to his family on 7 July 1855 describing an encounter with a dying Russian soldier.

"(During a night action) I was sitting on a stone when I heard a groan near me, and upon looking I found a poor Russian boy wounded in the side, I lit a candle and looked at him but found I could do nothing to (i.e. for) him so I gave him some water... and laid his head on a flat stone, but upon looking at him again I found him dead".<sup>15</sup>

It is difficult to say how much effort was put into rescuing enemy wounded, but clearly some attempt was made. The situation had, however, manifestly improved since the siege of Messina in 1848, only five years before the outbreak of the Crimean War, when Dr. Palasciano had been imprisoned, and only just escaped execution, for treating wounded enemy soldiers.<sup>16</sup> Elsewhere in the Wrench papers an indication is given of the

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<sup>14</sup> E.M. Wrench, *Diary for 1855*, summary of events referring to 22 March 1855.

<sup>15</sup> Wrench Collection, University of Nottingham Library.

<sup>16</sup> Jean Pictet, *Development and principles of international humanitarian law*, Martinus Nijhoff, 1985, p. 25.

effects of inadequate provision for collection of the wounded, together with the absence of effective humanitarian, and sanitary, provision for the dead. It is clear that little or no allowance was made for the collection and burial of the dead. In a letter written on 10 February 1855 from the camp before Sevastopol, Wrench said:

“The dead Russians have been lying in the part I went to today till quite lately as the Russians fired on us if we went in any numbers to bury them”.<sup>17</sup>

Long after the Crimean War, in an undated 1905 cutting from the *Daily Mail* newspaper, correspondence received by the paper from Wrench is cited in relation to the discovery of the body of a Miss Hickson and its state of preservation. The newspaper reported:

“Mr. E.M. Wrench FRCS, referring to the preservation of the hands while the neck was gnawed, states that he saw dead Russians on the field of Inkerman with the crocuses blooming between their mummified fingers after the fleshy parts of the body had been devoured by birds and beasts.”

Such a condition would not have been reached immediately and one is left to wonder both whether they had suffered instant death on the battlefield and what the condition of the battlefield had been in the intervening period.

## **What was wrong with medical services in the Crimean War?**

The papers of Edward Mason Wrench indicate, as was suggested at the outset, a rather more complex situation in mid-19th century military medical services before the pioneering work of Henry Dunant than is sometimes assumed. The state of official medical services and, most particularly, of the medical supply system stands unequivocally condemned in Wrench's writings. At the same time it is clear that he and other medical staff working at or near the front line were well aware of the defects and eager for improvement. A particularly interesting light is cast upon this by the attitude taken by Wrench, as a military surgeon, to the

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<sup>17</sup> Wrench Collection, University of Nottingham Library.



work of Florence Nightingale. In a letter written on 14 May 1855 from the camp before Sevastopol, Wrench wrote to his family:

"Poor Miss Nightingale was landed today at 4 o'clock and carried up to the convalescent hospital at Balaclava on a stretcher, she has got fever. I hope she will get better, she has been the saving of many lives herself — I am disgusted with anyone speaking ill of her... they little know what she has gone through. The big surgeons may call her interfering, but the adjutants stick up for her and as they were the men who did all the work at Scutari they ought to know best".<sup>18</sup>

The implicit contrast shown by this letter between bureaucratic obscurantism and the view of those in the front line is highly significant. The ultimate conclusion reached by Edward Wrench upon the failures of the official military medical services in the Crimean War put the essential point clearly. In 1899, looking back upon the lessons of the war, he wrote,

"(I)t was the system and not the men that failed. The medical department was, like every other in the army of that date, quite unprepared for a great and prolonged war, hampered by red tape and denied all independence of action... The Crimean campaign taught a lesson I trust will never be forgotten... that unless the medical department of the army is made efficient and supplied with its proper complement of officers and ambulances during peace, it cannot be expected to do its duty efficiently during war".<sup>19</sup>

These needs were in part matters for post-Crimean reforms of military organization, but were also in large part those that Henry Dunant was to address with such effect after his experience at Solferino.

In the context of the background to modern development of international humanitarian law, the papers of Edward Mason Wrench have considerable significance. They confirm the image of an age which had reached a nadir in, amongst other matters, humanitarian provision for the wounded and sick in armed conflict, but also one which at some levels was aware of and concerned about that fact. The profoundly important proposals made by Henry Dunant in "A Memory of Solferino" found a receptive audience, and the developing climate of opinion which Dunant encouraged and led in order to prompt positive action can be seen very

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<sup>18</sup> *Ibid.*

<sup>19</sup> E.M. Wrench, *op. cit.*, (note 1), p. 8.

clearly in the writings of the young English military surgeon in the Crimea. Edward Mason Wrench cannot be called a "precursor" in the development of international humanitarian law, but the attitudes which he represented were an important part of the background to the emergence of that law and practice.

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*HUMANITARIAN POLICY AND OPERATIONAL ACTIVITIES*

**STRENGTHENING THE COORDINATION OF  
EMERGENCY HUMANITARIAN ASSISTANCE**

*Address by Mr. Cornelio Sommaruga*

*President of the ICRC at the  
United Nations General Assembly*

*— 49th session —*

*(23 November 1994)*

The year 1994 will be remembered as one of unspeakable suffering, during which entire populations were threatened, starved, terrorized, massacred and forced into senseless exile. It will also be remembered for having revealed the full extent to which the massive trade in conventional weapons of all kinds and their indiscriminate and unscrupulous use were responsible for this widespread suffering.

While the events in Rwanda certainly provide the most striking illustration of this situation, other conflicts such as those in Liberia, Angola, Bosnia-Herzegovina, Afghanistan and Sri Lanka, to mention but a few, must not be forgotten. Today, more than ever before, the International Committee of the Red Cross is involved in all aspects of emergency humanitarian protection and assistance. Allow me therefore to take this opportunity to share with you some thoughts based on the day-to-day experience of our delegates.

**The strengthening of humanitarian coordination and  
the role of the ICRC**

What can be said at present about the process of strengthening the coordination of humanitarian assistance? First of all, this process remains indispensable, especially in view of the magnitude of existing needs and the growing number of humanitarian players.

There has been undeniable progress in terms of openness and exchange of information. While this is a welcome first step it should not give rise to complacency, for compiling information does not in itself make for better coordination.

Fortunately, emergency situations often trigger common-sense reflexes which naturally lead, especially in the field, to tangible and complementary efforts to avoid wasting energy.

However, much still remains to be done before true coordination can be said to have taken the place of cohabitation, and this will be a lengthy process if excessive centralization and bureaucracy are to be avoided. Simply adopting a resolution will not solve the problems overnight.

Competition among various agencies and organizations, the tendency of certain States to engage in undisciplined bilateral action, the lack of professionalism shown by some new NGOs — whose good will is not in doubt — all these constitute obstacles that must be overcome.

Above all, better coordination should allow more efficient planning of humanitarian action in terms of time and place. The concentration of humanitarian agencies in a few theaters of operation, while other situations are neglected, and their simultaneous withdrawal without any provision having been made for the transition to development programs are so many examples of poor coordination and unsatisfactory planning. Yet it is totally unacceptable that the victims should be forgotten or abandoned!

The International Committee of the Red Cross, working as it does in constantly evolving conflict situations, is open to the idea of coordination but intent on preserving its independence, which it considers highly constructive. While it firmly believes in openness, combined with tangible and flexible cooperation adapted day by day to conditions in the field, it takes its decisions independently — and is financed independently — so as to preserve, in all circumstances, its treaty-based role as a neutral humanitarian intermediary and also to maintain the speed and effectiveness of its operational activities. This independence is a fundamental working asset which it places at the service of all victims, while adopting a spirit of complementarity and solidarity in regard to the sharing of responsibilities with its humanitarian partners in the field.

## **The fundamental value of humanitarian work**

Our discussion here, which centers on our humanitarian responsibilities, gives me an opportunity to share with you my concern about the

frequent use of the term “humanitarian” in a sense too far removed from its original meaning, which is closely tied to the prevention and alleviation of suffering.

The pressure exerted on governments by the media has created a political demand for high-profile action. Such action can lead governments to lose sight of broader needs and to avoid or postpone necessary political or even military decisions. Yet humanitarian action is no substitute for these decisions.

This prompts me once again to call for a clearer definition of the respective aims and mandates of all the players on the international scene.

### **The relationship between humanitarian and military action**

Recent experience, especially in Bosnia-Herzegovina and Somalia, has enabled us to gain a deeper understanding of the relationship between humanitarian and military action. While military or police intervention may prove necessary for the deployment of humanitarian operations, the two forms of activity should on no account be confused. Specific aims promote greater efficiency. Indeed, the parties to a conflict must be able to perceive the neutral and impartial character of humanitarian action if it is to be accepted. Wherever this is not the case, victims suffer all the more and humanitarian workers run a high risk of being taken as targets, in particular when a peace-keeping mandate is being replaced by a mandate to impose law and order. This is why I firmly advocate a clear distinction between military and humanitarian action, without, however, ruling out the possibility of continuous dialogue to ensure harmonious complementarity.

### **The relationship between humanitarian action and justice**

The setting up of international tribunals to try those accused of massive violations of international humanitarian law and of human rights law committed in the former Yugoslavia and in Rwanda has raised hopes for an end to the reign of impunity. The ICRC fully supports the establishment of an international criminal tribunal. Justice is a crucial factor in restoring confidence among the population of a divided nation and hence in enabling displaced people and refugees to return to their homes.

It is complementary to, yet distinct from humanitarian action. It is not up to humanitarian agencies to act as judges, and even less as prosecutors, as this would make it impossible for them to gain access to the victims. The situation in Rwanda today, where the work of observers sent by the High Commissioner for Human Rights constitutes one step in the judicial process, will serve as a testing ground for this complementarity.

## **Relationship between humanitarian work and political action**

No crisis can be solved without political action. Without it emergency humanitarian aid can do no more than temporarily alleviate the acute symptoms of an endemic, if not incurable, disease.

Is it not obvious that the breakdown of State structures, massive violations of humanitarian law and human rights by governments or factions, and in some cases the complete disappearance of the very principle of humanity, are caused by lack of attention and action on the part of the international community in finding solutions either before or at the outset of an emergency situation?

The humanitarian agencies expect political leaders, States, the United Nations and regional organizations to make their task easier, without actually doing the work that has been entrusted to them. Urgent attention needs to be given to situations that are reaching deadlock while continuing to cause dreadful suffering — as in Afghanistan, Liberia and Somalia, for example.

I am convinced that all the humanitarian agencies wish to join me in inviting political leaders to take greater account of humanitarian criteria when taking decisions to impose economic and financial sanctions. Perhaps we should give special thought here to the grave effects on public health when water purification and pumping installations are paralyzed. Is it not incongruous to impose debilitating sanctions with one hand while with the other bringing in humanitarian aid to restore supplies vital to the population's survival?

In this connection I should like to emphasize the ICRC's profound concern about the disastrous consequences for the population, and children in particular, when water supply systems are damaged, contaminated or even destroyed. This is an increasingly widespread phenomenon and a growing cause for concern in today's armed conflicts.

## **Relationship between humanitarian action and development**

The humanitarian agencies cannot hope to achieve optimum efficiency solely by clarifying their respective mandates. They must also carefully orchestrate the conduct of different types of activity over time. This, I believe, is one of the greatest challenges facing us in a rapidly changing environment.

The sole purpose of emergency humanitarian action is to save lives. Emergency operations should not last longer than is absolutely necessary and should include rehabilitation work. With this goal in mind the ICRC frequently gives conflict victims the means they need to make their own way back to self-sufficiency, by providing them with agricultural tools, fishing tackle, seed and veterinary assistance.

The continuum of emergency action, rehabilitation and development requires flawless management, the more so since responsibility for such work lies with different organizations with different mandates and different budgets. That is why proper planning over time is so important, both from the conceptual and decision-making standpoints and in terms of human, material and financial resources. All these efforts are indispensable for building peace.

## **Respect for international humanitarian law**

As President of the International Committee of the Red Cross I could hardly conclude this statement without restating the basic postulate that international humanitarian law must be respected in all circumstances. In its Declaration of 1 September 1993, the International Conference for the Protection of War Victims reaffirmed the need to make the implementation of international humanitarian law more effective. An open-ended intergovernmental group of experts responsible for seeking practical means of promoting full respect for this law and the application of its rules is due to meet in Geneva from 23 January 1995. The group will submit a report to the States and to the next International Conference of the Red Cross and Red Crescent, which will be held in Geneva in December 1995. This Conference is the only forum that provides an opportunity for dialogue between the National Red Cross and Red Crescent Societies, their International Federation, the ICRC and the 185 States party to the Geneva Conventions. Ensuring that practical steps are taken to fulfil the obligation

to respect and ensure respect for humanitarian law is an absolute priority and will be the principal goal of the Geneva Conference. This gathering will leave no room for political debate and will provide an excellent opportunity to find answers to purely humanitarian problems, which bring us face to face with our ethical responsibilities. I hope that the debate will be both serene and constructive; indeed, I feel that this is more necessary than ever if the international community is to succeed in taking effective action to relieve the unspeakable suffering endured by countless people worldwide.

The challenge that lies before us all is to humanize political action rather than politicize humanitarian endeavour.

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## Emergency coordination: a problem of humanitarian agencies or rather of politicians and generals?\*

by Peter Fuchs

The problem of coordination in humanitarian emergencies arising from conflicts is not a new subject. So many seminars, round tables, declarations and publications have tackled it. Most came to the logical conclusion that stronger coordination between the humanitarian agencies was necessary, that the money had to be spent in the most effective way, and that new coordination bodies had to be created to make sure that there was no waste of operational energy.

It makes sense of course to pursue and intensify these efforts. The end of the Cold War raised hopes for a more peaceful world and in the new climate of international relations tension between governments has indeed eased in several areas of conflict, but conflict has flared up in other parts of the world and again in former theatres of the Cold War. Manifold types of violent confrontations are today claiming a growing number of victims. These phenomena, which are an obvious threat to international peace and stability, plus the rapidly growing number of non-governmental organizations and the increasingly operational nature of the large international agencies, all call for tighter cooperation and stricter coordination.

The creation of cooperation mechanisms such as the meetings of the Inter-Agency Standing Committee and its working groups, in which the ICRC takes an active part, or the Department for Humanitarian Affairs (DHA) within the UN system, or ECHO within the EU, offers new possibilities to discuss coordination.

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\* Article based on an address delivered at the Royal Institute of International Affairs, Chatham House, London, 15 November 1994.

In addition, there is an increased awareness of the need for coordination among humanitarian agencies at field and headquarters levels. The ICRC not only consults regularly with operational UN bodies such as UNHCR, but also with the National Red Cross and Red Crescent Societies and their Federation and with major NGOs. There is a permanent exchange of information and plans of action are widely discussed. Parts of programmes are handed over to other competent operational organizations. Humanitarian workers in the field work hand in hand.

Usually, the ICRC is the first organization on the spot because of its permanent presence in regions where tension prevails. If a conflict breaks out, the ICRC immediately strengthens its presence, intensifies the gathering of information, evaluates humanitarian emergency needs and launches its activities to protect and assist civilians, prisoners and the wounded. The ICRC shares information with the governments and the various humanitarian organizations that might step in, especially the International Red Cross and Red Crescent Movement and the UN agencies.

This constructive form of cooperation certainly deserves to be pursued and developed. It makes it possible to avoid duplication of effort or failure to respond, thanks to a distribution of tasks in accordance with the respective mandates of the different organizations concerned. But despite these efforts, some problems remain.

Only too often, following constructive discussions leading to the distribution of urgent tasks, the ICRC, together with certain non-governmental organizations whose courage I should like to commend, finds itself alone out in the field for long periods of time or, worse, it is left on its own when the UN and NGOs decide to withdraw.

Another problem is the pressure which is put on NGOs to act as instruments of donor policy, to concentrate on activities which are rewarded by a high national media profile and provide perfect visibility, thereby enhancing fund-raising possibilities and leaving for others less appealing and less visible tasks such as emergency rehabilitation and coping with the medium-term consequences of war.

While it is encouraging to see that humanitarian issues are higher on the agenda of the international community today, the trend towards "politicization" of humanitarian work does not favour respect for international humanitarian law. A more precise division of tasks and responsibilities is therefore essential between the humanitarian organizations that

are working to alleviate suffering and the political bodies whose duty it is to tackle the causes of conflict and to restore conditions for peace and stability, *inter alia* by military means.

Finally, beyond purely operational coordination, the humanitarian agencies, which are well placed to observe the consequences of war, should join forces to promote respect for international humanitarian law and act in a way which enhances it. The "code of conduct" promoted by the ICRC and the International Federation of Red Cross and Red Crescent Societies and adopted by some of the major NGOs is an important step in this direction.

Thanks to all these coordination efforts, considerable progress has been achieved in the field of operational coordination between the various humanitarian agencies. The existing mechanisms should be sufficient to overcome the remaining problems.

What worries me more today is the indiscriminate use of the word "humanitarian", which is creating new problems of coordination. Much of today's international response to a conflict is labelled "humanitarian". There is a purely military intervention dubbed "humanitarian", there are army units which are deployed for purely "humanitarian" work in a conflict region without participating in peace-keeping efforts; a "humanitarian group" should supervise the implementation of an embargo on a border. To me, this indiscriminate use of the word "humanitarian" seems to be an indication of increasing uncertainty as to the different roles and responsibilities within the international community, and this leads me to the fundamental question of whether the real problem of emergency coordination is still a problem of the humanitarian agencies or rather a problem of politicians and generals.

It is true that the changing environment of conflicts has become much more complex. The new conflicts often have little to do with the classic international or civil wars of the Cold War period, where a clearly defined number of parties were involved and a certain chain of command, both political and military, existed on each side. The new phenomena encountered today — the destruction of any social fabric, the complete disappearance of any form of authority except for that of guns, the denial of basic values and the increasing chaos and anarchy — are making conflicts more complex, the suffering of civilians ever more cruel, and humanitarian workers and the international community more helpless. Instead of having to deal with generally two parties to the conflict, each with its own strategic Cold War patron in the background, the ICRC today often has to negotiate with groups, clans, bandits, militias and weekend fighters.

The international regulating mechanisms are not yet adapted to these new situations.

The disappearance of the direct or indirect influence brought into play by the superpowers during the bipolarity of the Cold War leaves humanitarian agencies, but also politicians and generals, often without clear points of reference. And it seems to be difficult, sometimes even impossible, for governments to reach a realistic consensus on political and military options and actions. Even though UN resolutions are no longer blocked by the veto mechanisms so often applied during the Cold War, they are often not realistic and reflect a verbal consensus rather than a genuine readiness to intervene in a truly efficient manner.

In this increasing aimlessness, a result of the failure to reach a consensus on appropriate political or military reaction, humanitarian action provides a welcome focal point, a sense of purpose. This activism helps to decrease the pressure exerted on governments not only by the national and international media, but also by public opinion, which tend more and more to dictate today's agenda of political priorities and create a political need to act immediately. Since nobody contests the need for humanitarian aid, unlike political or military interventions, humanitarian action may serve "*ut aliquid fieri videatur*" — in order to give the impression that something is done.

But humanitarian action should be parallel to political or military action, not replace it. If humanitarian action is misused as an alternative instrument of politics, as an opportunistic extension of foreign policy, as a means of decreasing internal political pressure in one's own country, this same humanitarian action loses its "innocence", is no longer neutral and free of ulterior political motives. It will finally lose its very identity and even become a target for armed attacks.

As I said, army units are doing humanitarian work but refuse peace-keeping activities. Governments are stepping up their direct humanitarian activities through governmental operational bodies under their national flag. Humanitarian agencies are taking part in the so-called integrated approach.

This creates new coordination and identity problems during humanitarian emergencies.

Let us have a look at the integrated approach which is the guiding principle of the *Agenda for Peace*, that very stimulating and valid document by the United Nations Secretary-General, Mr. Boutros Boutros-Ghali. This *Agenda* advocates a comprehensive approach including political, military and humanitarian activities which seems to make sense

in complex emergencies such as today's conflicts. Creating synergies between the different possibilities for action could indeed enhance the efficiency of the international community without considerably increasing the resources which have to be invested.

This approach is certainly correct in situations of conflict prevention. Preventive diplomacy, economic support, development, humanitarian aid and the deployment of military observers can indeed stabilize a given situation. Greater means should be invested in such preventive efforts, which are in any case cheaper than all the investments which have to be made in order to contain a conflict which has broken out, not to mention reconstruction and rehabilitation.

The same synergies can be created in the post-conflict phase where consolidation of peace, reconstruction and, if needed, a bridging humanitarian action in favour of the most needy are required.

But I think that the plan set out in the *Agenda for Peace* cannot be applied without difficulty during the acute phase of a conflict. In such a situation, humanitarian work concentrates on the acute symptoms produced by the crisis and may not tackle political or military problems. There is a clear need for an independent, neutral and impartial approach without any ulterior political motives in order to reach all the victims of the conflict on all sides, and to do so with the agreement of all parties. In such a situation, often only really independent, neutral and impartial organizations such as the ICRC can reach those in need. The States were completely aware of this necessity when they drew up and signed the Geneva Conventions which stipulate this neutrality and impartiality of humanitarian assistance.

"Neutral and impartial" — in the meantime, most of the humanitarian agencies use these words to define their identity. But the important question is not whether an organization really is or declares itself to be neutral and impartial. What counts is how that organization is *perceived* by the various parties involved in the conflict. UN agencies such as UNHCR are certainly neutral and their action is impartial. But since they operate under the same blue emblem as the UN blue helmets, using the same white cars with the blue flag protected by white armoured vehicles with the blue emblem, they are not necessarily *perceived* as being independent and neutral. If UN troops are seen as enemies by one or another protagonist, all those who work under the same flag and emblem risk being equated with them and also regarded as enemies. This perception of dependence and partiality jeopardizes humanitarian work in general and the safety of all humanitarian field workers.

The same is true for the latest efforts of some governments sending armed army units into conflict zones to do purely humanitarian work. This blurring of responsibilities hampers coordination efforts considerably. Troops are made for peace-keeping and peace enforcement, that is what they are expert at. Humanitarian work needs a different kind of expertise and should be done by humanitarian organizations.

In order to prevent a further dangerous weakening of real humanitarian action, which must remain independent, neutral and impartial, it is even more important to combat the growing tendency to label any political and military intervention as "humanitarian".

There is, of course, an important place for political and military action in a humanitarian emergency, especially in the anarchic and chaotic new conflicts. It would be impossible, and probably even undesirable, to dissociate humanitarian endeavour completely from political action.

Humanitarian work concentrates on the acute symptoms produced by crisis, but the crises themselves cannot be resolved without political or even military measures to tackle their underlying causes.

In chaotic situations of total insecurity, humanitarian work may depend on the creation of an environment which allows the deployment of humanitarian operations. A humanitarian space must be established by deploying UN troops in an early phase of the conflict, replacing absent police authorities and ensuring a minimum of security for humanitarian organizations to fulfil their mandates. But in order to do this, the UN Secretary-General should have a rapid reaction force at his disposal. Are the States ready to coordinate their efforts to this effect?

Again, military action should be clearly separated from humanitarian action. In the former Yugoslavia and in Somalia, it has unfortunately proved necessary to use armed escorts to protect humanitarian convoys. This, however, must remain a temporary and exceptional measure, and we must take care not to start thinking of it as an acceptable long-term solution. If we resign ourselves to these means, are we not in fact giving up all hope of persuading the belligerents to respect not only humanitarian work but above all defenceless civilians and prisoners? We must also demand and restore respect for protective emblems, especially those of the red cross and red crescent, which are so often disregarded.

Moreover, a clear distinction must be drawn between jurisdiction and humanitarian action. Although the ICRC and other humanitarian organizations are ready to take considerable risks in order to bring the victims assistance and protection, their role is not to act as judge and even less

as prosecutor. Their having such tasks would be seen as very dangerous by the parties to the conflict, which would do anything to avoid the presence of witnesses and would not allow access to those in need. However, we should be more than happy if the governments were to fulfil that role. This would discourage further violations of international law and, alongside other measures, would facilitate the restoration of dialogue and lasting peace.

Is emergency coordination a question for humanitarian agencies or rather for politicians and generals?

I think the answer is less complex than the new complex emergency situations. The major humanitarian agencies have reached a promising level of consultation and coordination with quite good results in the field. But today I feel that it is urgent to go beyond humanitarian coordination, to enhance consultation and effective coordination in the political and military approach. The respective responsibilities of humanitarian agencies, politicians and generals must be defined more clearly and complied with, and the political and financial support for both activities must be strengthened. This could create new synergies and clear responsibilities without confusion. Both are desperately needed to resolve today's emergency situations with their devastating effects and inhuman consequences.

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# Between Insurrection and Government

## ICRC ACTION IN MEXICO

(January-August 1994)\*

by Béatrice Mégevand

### INTRODUCTION

On 1 January 1994, Mexico's awakening after New Year's Eve was rude to say the least, for that was the date chosen by a hitherto unknown guerrilla movement, the *Ejército Zapatista de Liberación Nacional* (Zapatista National Liberation Army)<sup>1</sup>, to launch a simultaneous attack on several municipalities in the south-eastern Mexican State of Chiapas, and particularly on its jewel, well known to tourists — San Cristóbal de Las Casas.

No analyst had foreseen this sudden outburst of indigenous fury, which for twelve days sent shock waves throughout the country. The toll taken by the brief conflict was heavy: according to official figures, over 150 people (mostly civilians) were killed, several dozen wounded and some 140 detained. Public opinion was traumatized, for despite its historical tradition of extreme violence, Mexico had lost the habit of war since the revolution of Pancho Villa and Emiliano Zapata.

In the space of a few days, reaction was organized against this new revolutionary outburst, inspired in its symbolism and content by that great Mexican revolutionary hero. Once the initial surprise had worn off, President Salinas de Gortari appointed a special representative — the *Comisionado para la Paz y la Reconciliación en Chiapas* (Commissioner for

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\* Original: French — September 1994.

<sup>1</sup> More commonly known as EZLN or just EZ, or as “*los zapatistas*”.





⊕ ICRC mission + ICRC presence

ICRC 1.95

Peace and Reconciliation in Chiapas), known as the *Comisionado* for short — to start talks with the guerrilleros as soon as possible; a mission to mediate between the government and the EZLN was organized under the aegis of Monsignor Samuel Ruiz García, Bishop of San Cristóbal; two heads fell in the government — that of the Governor of Chiapas State, Elmer Setzer, and that of the Minister of the Interior (and former Governor of Chiapas), Patrocinio González Garrido; and last but not least, a unilateral cease-fire was declared by the President himself on 12 January. The EZLN accepted the cease-fire and withdrew to “its own” territory, the dense jungle known as the Selva Lacandona.

That was also the date on which the ICRC, which had been present in Chiapas since 5 January, thanks to the support and cooperation of the Mexican Red Cross (MRC), offered its services in order to assist the victims of the conflict and ensure that the protection provided for by international humanitarian law was guaranteed by the parties.

## Humanitarian action and dialogue

It is interesting to note that in its very first communiqué, the *Declaración de la Selva Lacandona* issued to the national and international press, on 1 January, the EZLN had declared its intention to respect the “law of war” and its desire for the presence of the “International Red Cross” in Chiapas. In spite of some inaccuracies in the wording, the intentions were good and above all clearly expressed.

The offer of services was accepted one week later, on 17 January, and as from the 18th the ICRC was authorized to visit some 70 detainees held in the Cerro Hueco prison at Tuxtla Gutiérrez, the capital of Chiapas State (the other 73 had meanwhile been released). These visits, like all those which followed until the last three detainees were freed in mid-July, were coordinated with the National Commission of Human Rights (NCHR) and were all conducted under conditions conforming with ICRC practice, with the full cooperation of the detaining authorities. Two reports and a *note verbale* containing the findings of the ICRC were sent to the authorities in Mexico City via the Ministry of Foreign Affairs.

The ICRC delegation was also involved from the outset in the “pacification” process intended to bring about the dialogue that the government firmly intended to establish as soon as possible with the EZLN. In this context, both the mediators (the only channel of communication between the ICRC and the EZLN during the first few weeks) and the *Comisionado* called upon the ICRC to establish a permanent presence in the “free zones”

— a vague term used to designate the buffer zones that the EZLN wanted to have in order to avoid any direct contact with the Federal Army.

The presence that the ICRC was requested to establish in the “free zones” was essentially a medical one, in order to provide the civilian population in the conflict area with the assistance that had been cut off since 1 January. The government demanded however that the ICRC work with Mexican staff, from the Ministry of Health or from the Mexican Red Cross.

After several postponements, partly due to misunderstandings between the government and the EZLN (communication with which soon proved difficult owing to the impossibility of direct contacts), on 4 February the ICRC unfurled its flag at San Miguel and Guadalupe Tepeyac, two “free zones” on which the parties had managed to agree. These zones were situated at the two main entrances to the Selva Lacandona.

Medical work began there immediately, with staff from the Epidemiology Department, dispatched by the Ministry of Health from Mexico City as a vanguard to deal with the emergency. From the outset, the main role played by the ICRC was that of a “guarantor of neutrality”, enabling the Mexican medical staff to operate in a hostile region.

Very soon after the opening of the “free zones”, proceedings to establish a dialogue between the government and the neo-Zapatistas were stepped up, resulting in an intensification of ICRC activities.

The ICRC was thus requested to place EZLN delegates, whom it was to transport from an unknown point in the Selva Lacandona to the meeting-place (both places to be kept secret until the day before the meeting), under the protection of the red cross emblem and to guarantee the neutrality of the area around the place where the dialogue was to be held. The actual meeting-place could not be demilitarized, since some of the EZLN delegates refused to lay down their arms. At that early stage there was no mention of negotiation, although the term was to be used freely by the media as soon as the meetings began.

Meanwhile, the ICRC representatives had at last managed to take up direct contacts with the EZLN, and particularly with its spokesman, the highly publicity-conscious and publicized “Sub-Commander Marcos”. At this first meeting, as at all the following ones, the ICRC representatives had the unaccustomed experience of conversing with masked men — a set-up that well reflected the “mystery” surrounding this armed insurrection movement, whose claims, pragmatic and at the same time simple and basic, are virtually all that is known about it with any certainty. There

is no ideology or dogmatism in the EZLN's many declarations and communiqués, and the movement seems to have a purely indigenous origin. "Marcos" is white, obviously from an urban bourgeois background, and one of the most successful media figures of the late twentieth century. He is the EZLN's military leader and spokesman, and represents both its collective image and the link between the indigenous world (which has hardly changed since the days of Emiliano Zapata or indeed of Hernán Cortés and Montezuma) and modern, industrialized Mexico. The two Mexicos do not speak the same language, in the literal or in the figurative sense, and "Marcos" thus provides an interface between the two cultures. Accordingly, the "neo-Zapatista revolution" would appear to be a phenomenon completely different from the Latin American guerrilla movements witnessed so far, but one of which, as we have already said, very little is known.

#### THE ROLE OF THE ICRC: GOOD OFFICES AND NEUTRAL INTERMEDIARY

### The "free zones"

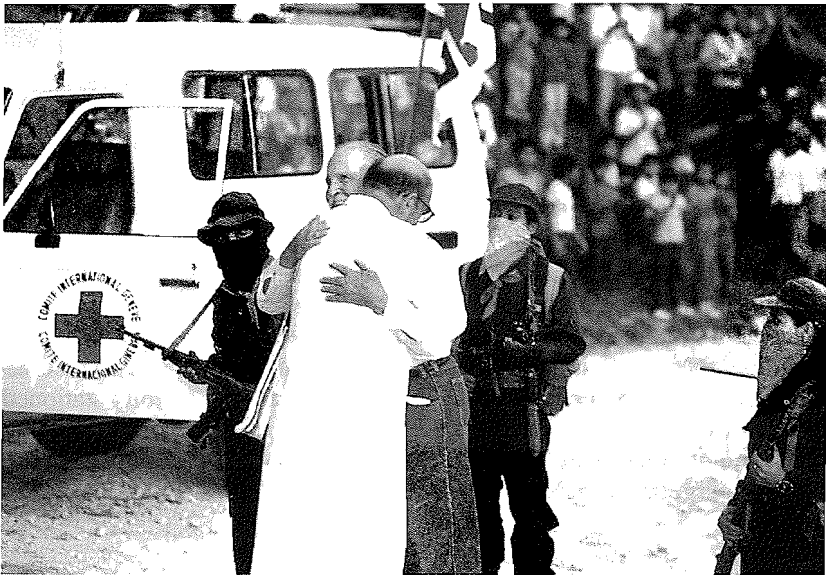
As soon as the "free zones" were established, the role of the ICRC began to be more clearly defined. Its presence in the two buffer zones was above all designed to **prevent** the resumption or escalation of open conflict such as that experienced by the country during the first twelve days of January. Since the practical work was being carried out by Mexican staff belonging to official Mexican health institutions, the ICRC's role was primarily to act as guarantor — from the point of view both of the EZLN and of the government — of the neutrality and impartiality of the work carried on by the teams.

### The release of General Castellanos

Once the "free zones" had been created, the next step towards setting up a dialogue between the parties was the release of the only prisoner taken by the EZLN during its January offensive, retired General Absalón Castellanos Domínguez. A former Governor of Chiapas State and a major landowner, he possessed several large estates and thus personified the

power and the political and economic system that the EZLN challenged and sought to dismantle. The ICRC had had access to General Castellanos, having visited him twice while he was held in the heart of the Selva Lacandona.

When arrangements were made for his release on 16 February, at the edge of the “free zone” of Guadalupe Tepeyac, it was naturally the ICRC that the mediation team, on behalf of the EZLN, requested to witness the event. This was accompanied by a long ceremony, organized to the last detail by the EZLN, which often showed a marked inclination for staging media events. The release of General Castellanos, with its complicated procedure (the EZLN handed him over to the ICRC, which handed him over to the mediator, who handed him over to the *Comisionado*, who handed him over to his family ...), also marked the first meeting between a representative of the government and members of the guerrilla movement, although no direct contact was established on this occasion.



Release of General Absalón Castellanos, on 16 February 1994.  
Photograph ICRC/E. Thibaut.

## Preparations for dialogue

Five days later began the “conversations in the cathedral”, to paraphrase the Peruvian writer Vargas Llosa. It was indeed in the superb and impressive baroque cathedral of San Cristóbal de Las Casas — a small drowsy colonial town at an altitude of 2,300 metres in the heart of the Altos de Chiapas mountains — that the dialogue between the government and the EZLN was initiated on 21 February. The day before, the ICRC had once again been asked to lend its good offices. After long and meticulous preparations with the *Comisionado* and mediation teams, on the morning of 20 February three ICRC teams went to three different places to collect the 19 EZLN delegates supposed to come to San Cristóbal to take part in the meeting. Each convoy contained one white vehicle provided by the mediation team to carry those EZLN representatives (such as “Sub-Commander Marcos” and some others) who wished to retain their weapons.

The journeys took between one and a half and five hours, the routes and other arrangements having been settled in the minutest detail (for example, responsibility for security was assumed by the *Policía Federal de Caminos* — Federal Road Police — where the convoys joined paved roads and all the Federal Army checkpoints on the roads leading to San Cristóbal were opened). The operation was successful and was carried out within a minute or so of the times scheduled.

A “neutral humanitarian area” was declared all round the cathedral — a strip several metres wide bordered with bands of white fabric on which some 200 volunteers from the Mexican Red Cross had painted the ICRC emblem. No one was allowed to enter this neutral area, which was placed under the surveillance of about 350 volunteers from the National Society, who took turns to stand watch night and day with exemplary selflessness and discipline (for the nights can be bitterly cold in the Chiapas mountains in February...). They were further reinforced by several hundred equally motivated volunteers from ESPAZ (*Espacio para la Paz*)<sup>2</sup>. The military police only took third place, and carried no weapons except truncheons. An ICRC vehicle was permanently stationed in front of the main doorway of the cathedral, constantly flying its flag as a symbol of the neutrality of the area, but also as a precaution in case of an emergency evacuation.

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<sup>2</sup> A body coordinating the work of Mexican NGOs.

## The dialogue

For several days the cathedral was transformed into a kind of vast television set: on one platform stood a long table surrounded by some thirty chairs (for the EZLN delegates, the *Comisionado* and the mediator) and covered with microphones, against the backdrop of an enormous Mexican flag draped over the altar; another platform in the main nave accommodated some 300 photographers and cameramen, and serried rows of benches enabled dozens more journalists to sit down during the long periods of waiting for press conferences and daily press releases. The many statues of the Virgin, Jesus Christ and various saints looked down resignedly on the scene and bore on their pedestals notices asking the occupants to refrain from smoking ... This house of prayer dating back to the sixteenth century had thus become the hub of political and media activity in Mexico in 1994. The actual meetings between the “negotiators” took place in closed session in the many diocesan side buildings. The ICRC did not take part in them (having no reason to do so), and confined itself to having separate talks with each party at the end of this first meeting, on 2 March, in order to find out the conclusions they had reached concerning the ICRC's presence in Chiapas. That presence was maintained, within the limits of the activities conducted hitherto.

On the following day, in the small hours of the morning (to evade the journalists and for security reasons), the convoys scheduled to take the EZLN delegates back to their points of departure set off along the routes they had followed on the way out, and with the same arrangements — and everything went as smoothly as it had before.

## AFTER THE DIALOGUE

These events were followed by a long period of consultations at EZLN headquarters on the proposals put forward by the government, and then by the suspension of these consultations as a result of the assassination of the candidate of the PRI<sup>3</sup> before the August presidential elections.

During this period, the ICRC continued to play its role as a neutral intermediary in the field: medical activities were strengthened and expanded, a vaccination programme was started for women and children

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<sup>3</sup> The Institutional Revolutionary Party, which had held power uninterruptedly for over 65 years.

living in the EZLN enclave and lacking any other form of medical assistance, and dental care was provided from time to time. All these activities were developed by agreement and in cooperation with the federal health services and those of the State of Chiapas. The condition set by the EZLN for allowing State employees to travel and work in the territory under its control was that they should be accompanied by ICRC representatives.

Similarly, a food aid operation was begun in May, after surveys conducted by the ICRC and the Mexican Red Cross in remote areas of the Selva Lacandona, which had been most severely affected by the severance of all trade and transport links with the main towns of that part of Chiapas, had shown that the nutritional status of the local civilian population was deteriorating sharply. The situation had been further aggravated by the fact that the fighting in January had prevented most of the indigenous peasants from harvesting their coffee and laying in stocks of food against the long and difficult rainy season. The ICRC and the Mexican Red Cross therefore initiated a joint food aid programme for three months (to cover the period until the August harvest) for 20,000 inhabitants of the "conflict area" and for 5,000 displaced people. The programme was run by the Mexican Red Cross and financed by the ICRC, which was also responsible for maintaining contact with the EZLN at various levels in the field, in order to obtain the safety guarantees essential for the success of the operation. This was also the background of the meeting between "Sub-Commander Marcos" and the President of the Mexican Red Cross, Dr Fernando Uribe Calderón — which was made possible by the good offices of the ICRC — to enable the National Society to inform the military head of the EZLN personally about the assistance programme.

On 4 May, the semblance of a dialogue was renewed between the *Comisionado* and the EZLN, this time in "Zapatista territory", on the edge of the "free zone" of Guadalupe Tepeyac. The good offices of the ICRC were once again solicited by the parties and the mediation team, with the request for delegates to escort the convoy carrying the mediator, the *Comisionado* and their respective teams from the last Federal Army checkpoint to the meeting-place. The surroundings were bucolic: oppressed by the torrid heat, the protagonists met in a wooden hut in the middle of a small clearing in the depths of the dense and humid jungle. On this occasion too, the ICRC delimited the area round the meeting-place, while security was ensured by about 500 guerrilla fighters discreetly concealed in the jungle.



The meeting, though brief and without tangible results, nevertheless marked the resumption of consultations from EZLN headquarters. The results were made public on 11 June, through a series of press releases: the neo-Zapatistas announced their decision to reject the government's proposals, thus putting an end to the "San Cristóbal dialogue". This came as a great shock to a country already in pre-electoral turmoil, since most Mexicans, optimistic by nature, believed or wanted to believe that peace was within arm's reach. Yet despite the failure implied by the EZLN communiqués, there remained the comforting reality of the continued cease-fire between the parties, and hence the maintenance of the "free zones" established in February.

## THE ICRC AND THE ELECTIONS

From that time on, all political attention and tension in Mexico was concentrated on the forthcoming elections. In one of its communiqués of 11 June, the EZLN mentioned a possible role for the ICRC as a "watch-dog" over the electoral procedure in the areas under its control. The delegation immediately contacted the Zapatista leaders, pointing out that the ICRC's mandate precluded it from supervising elections, an activity totally foreign to the humanitarian context in which all its work had to be conducted.

The EZLN then sent a letter to the ICRC specifying the role that it was asked to play, namely that of escorting staff bringing balloting equipment into "its" territory, in order to bear neutral witness to the fact that nothing untoward had happened to them. In the end, and once again thanks to the mediation of the Bishop of San Cristóbal, the parties agreed to request the ICRC to escort the equipment and staff from the last army checkpoint to the two "free zones", which were to serve as a "logistical base" for the orderly conduct of elections in "Zapatista territory".

Once again, therefore, the ICRC placed its good offices at the service of the parties, in order to facilitate a meeting between them in the course of an extremely delicate electoral procedure, in which the least slip might lead to the resumption of hostilities and seriously jeopardize the fragile peace that had reigned in Chiapas since 13 January.

In addition, this operation raised a question of principle: the ICRC's decision to accede to the parties' request prompted a very interesting debate within the institution as to the threshold beyond which the ICRC should in no case use its good offices or engage in mediation.

As a humanitarian institution mindful of the continuity of its activities, the ICRC has formulated guidelines designed to ensure the consistency of its work despite the passage of time, as well as its conformity with the Fundamental Principles of the Red Cross and Red Crescent.

Were the initiatives taken in the field by the ICRC delegation in Mexico, at the request of the parties to the conflict and with the agreement of senior operational officers at ICRC headquarters, in conformity with the guidelines adopted in peacetime? Or had that delegation exceeded its competence by engaging in political matters? Those were the main questions raised in the debate.

Generally speaking, with regard to problems relating to the causes of the dispute (and the Mexican elections were certainly such a cause, since the holding of transparent and honest elections was one of the most important of the EZLN's claims), "all the cases had an obvious humanitarian aspect, since they were by definition linked to situations of conflict or threat of conflict. Any distinction based only on their more or less humanitarian character would therefore be inconclusive". Moreover, the ICRC guidelines provided a doctrinal basis for the decision taken by the delegation in Chiapas, with the agreement of the desk officer at ICRC headquarters, to consent to the request put forward by the parties: "There is nothing to prevent it *a priori* from responding favourably to a request for good offices which might lie in (...) helping to ensure the implementation of an agreement concluded without its intermediary action".

The agreement that elections should also be held in "Zapatista territory" had been secured by the mediator after several bilateral consultations with the EZLN leadership and with the government's *Comisionado*, and under this agreement the parties had sought the good offices of the ICRC as a neutral organization trusted by them. On the basis of that request, the ICRC had agreed to escort the staff and the balloting equipment without thereby assuming any responsibility in the election procedure itself.

Without the cooperation of the ICRC, the elections in the EZLN fiefdom could probably never have been held. That would undoubtedly have exacerbated tension in an already sorely tried region, with readily imaginable consequences of humanitarian concern — for example, a mass exodus of civilians unable to express themselves by democratic means when they wished to do so, or even a resumption of hostilities.

## CONCLUSIONS

The ICRC's "Mexican story" goes on, since no solution has yet been found for the crisis that erupted in the south-eastern part of the country on that freezing night of 1 January — a crisis that has provided us with a wealth of experience and lessons.

### **Cooperation with the Mexican Red Cross**

Mention must be made of the excellent example of cooperation shown by the teamwork with the MRC, and particularly with its Chiapas branch.

In the very first days of January, the Mexican Red Cross issued a communiqué drawing attention to the principles of international humanitarian law and in that context suggesting the possibility of ICRC action. Moreover, its Chiapas branch had been at work since 1 January, evacuating the wounded and the civilian population from danger areas; those activities were later somewhat restricted because of an incident on 5 January, in which three first-aid workers engaged in MRC operations were wounded.

In subsequent weeks, the Mexican Red Cross undertook to assist people displaced as a result of the conflict. Their numbers varied during the ensuing months, reaching a peak of about 25,000 in February, declining to 5,000 in May and increasing again to about 15,000 in June/July, following the EZLN's announcement of its rejection of the government's proposals. Throughout its operation in aid of displaced people, the MRC, which was entirely responsible for the operation, was supported by the ICRC.

Apart from some initial misunderstandings and misapprehensions (inevitable when an institution such as the ICRC worked for the first time with a National Society which itself was for the first time confronted with a conflict situation), relations were excellent, being based on mutual recognition: the MRC came to know the ICRC and to trust it (or at least so we hope), having realized the complementarity of their roles and responsibilities, while the ICRC went through the same process, adding to it the humility which is an essential factor in a country and society jealous of their prerogatives and anxious to retain them.

The MRC is a strong and powerful National Society which holds an important position in Mexican life. Without its support, the ICRC would never have been able to make its way rapidly to Chiapas at the very beginning of the conflict and to establish its presence there.

On the other hand, the MRC has to deal with financial problems due to its size, the expanse of the country and the many difficulties it is faced with in coordinating its many branches and activities scattered over a vast territory with considerable cultural, social and economic differences. Cooperation with the ICRC has had the important advantage of enabling the MRC to take action in circumstances calling for resources and know-how (experience of conflict situations) which it lacked. The National Society has fully recognized those shortcomings, and it gave me great pleasure to note, in the course of an impromptu statement made at a seminar organized by the MRC delegation in the south-eastern part of the country, the interest that the Chiapas experience had aroused among other branches, especially those which might be faced with a situation similar to that known by Chiapas since January 1994.

## **ICRC action to avert conflict**

Without claiming that a resumption of hostilities in Chiapas was avoided thanks to ICRC action, it can justifiably be asserted that its presence on several occasions at least facilitated dialogue and meetings between the parties, at the political as well as the humanitarian level.

Although the dialogues of San Cristóbal and Guadalupe Tepeyac were above all important political landmarks, the role played in them by the ICRC was in full conformity with its mandate and the guidelines laid down in its principles and established policy. It was therefore also thanks to its good offices and its role as a neutral intermediary that the necessary conditions for this dialogue were created.

It was again thanks to its good offices and its permanent presence in San Miguel and Guadalupe Tepeyac that agreement could be reached at a more strictly humanitarian level, as in the case of medical activities.

Finally, its good offices made it possible for such a purely political procedure as that of the elections of 21 August to be conducted with all the necessary guarantees in a conflict area where the armed insurgents agreed to facilitate such a thoroughly democratic expression of will, provided that an institution such as the ICRC played its part and thus minimized the danger of a serious deterioration of the politico-military situation.

## **Sole organization present**

For reasons independent of the realities prevailing in the region and more closely related to political will, especially on the part of the Mexican government, the ICRC was and continues to be the only international humanitarian body operating in Chiapas in communication with the neo-Zapatista insurrection. Apart from the Mexican Red Cross and several local NGOs, it is indeed the only humanitarian agency present in the region.

Although these NGOs and the MRC are able to cover assistance needs, despite certain financial difficulties, the ICRC's role as a neutral intermediary and its good offices have proved to be irreplaceable, as many of its Mexican partners in discussion recognize.

This goes hand in hand with the full understanding of the role and specific nature of the ICRC shown by most of these people. Seldom has it found such fertile ground — it did so particularly among the mediation team and the EZLN — for explaining its mandate and making sure that it is understood.

## **Constraints on ICRC action in Mexico**

To be quite honest, it must also be acknowledged that ICRC action in Chiapas has been, and to a certain extent continues to be, subjected to considerable restrictions.

Although relations with the parties have improved over recent months, so much so that they now show more confidence in the ICRC and a greater understanding of its role and its specific mandate, it is also true that for a long time the government imposed major constraints on the ICRC, in particular as regards the delegates' presence and freedom of movement in the field, other than in the two "free zones", and their work to promote knowledge of international humanitarian law.

Though delegates are now much freer to work and move from place to place in the field, the extreme "discretion" that the ICRC has had to show in order to maintain a presence that will give offence to no one has prevented it from making itself known to the general public, and even to groups directly concerned by its activities.

Nevertheless, in the interest of actual or potential victims, it is important for the ICRC to be able to maintain the essential role that it has played thus far, sparing no effort to carry out its mandate as fully and successfully as possible.

**Béatrice Mégevand** has worked for the ICRC since June 1987 and carried out missions as a delegate in Gaza, Nicaragua and Cuba. She subsequently held the posts of deputy head of delegation and then head of delegation in El Salvador, head of sector for Somalia at ICRC headquarters and head of mission in Mexico, interspersed with short missions to the Near East and East and West Africa. She is currently head of delegation in Sarajevo for central Bosnia and western Herzegovina.

### **FIFTIETH ANNIVERSARY OF THE LIBERATION OF AUSCHWITZ CONCENTRATION CAMP**

The fiftieth anniversary of the liberation of Auschwitz concentration camp was held on 26-27 January 1995. Attending the ceremonies at Krakow and Auschwitz were several hundred survivors of the camp, representatives of associations of former deportees, 19 heads of State and numerous distinguished guests, including Mr Elie Wiesel and Mrs Simone Veil.

Invited in its capacity as Nobel Peace Prize laureate, the ICRC was represented at these ceremonies by its President, Mr Cornelio Sommaruga; Mrs Liselotte Kraus-Gurny, a member of the Committee; Mr Charles Biedermann, Director of the International Tracing Service; Mr François Bugnion, Deputy Director for Principles, Law and Relations with the Movement, and Ms Ewa Tuszynski, interpreter.

On 26 January, Mr Biedermann and Mr Bugnion attended a formal meeting of the Senate of the Jagiellonian University of Krakow, which marked the opening of the ceremonies. First was an address by the rector of the University on the subject of academic responsibility in seeking truth and fostering tolerance. Afterwards, the President of Poland, Mr Lech Walesa, and other dignitaries spoke on various topics, with particular emphasis on the vital importance of respect for one's fellow human beings, tolerance, and the importance of preserving the memory of the Holocaust while avoiding any revisionist changes.

That afternoon, Mr Sommaruga and Mrs Kraus-Gurny attended a meeting of delegation leaders, including several heads of State, convened by Mr Walesa to approve the text of an appeal for peace and tolerance that was to be made the following day at Auschwitz-Birkenau. During the meeting, which was held at Wawell, the Krakow Royal Palace, the ICRC President pointed out that the ICRC was taking part in these ceremonies to pay tribute to the memory of all victims, and to express its admiration of and solidarity with the survivors of Auschwitz. "I say it with humility, aware of the possible omissions and mistakes of the Red Cross in the past," he added. Mr Sommaruga also called for the development of a society based on tolerance and solidarity.

On Friday 27 January, commemorative ceremonies were held at Auschwitz-Birkenau in the presence of many distinguished guests, including 19 European heads of State, representatives of Jewish organizations and associations of former victims of persecution, as well as several hundred former deportees.

Participants first went to Auschwitz I, where they passed through a gate above which the words *Arbeit macht frei* ["Work makes you free"] were written in iron letters. A wreath was placed between Blocks 10 and 11, in front of the wall where the executions took place.

The main ceremonies were held in front of the Monument of Nations at Auschwitz-Birkenau, at the end of the railway where trains carrying deportees stopped.

Prayers were offered in keeping with Jewish, Catholic, Orthodox, Reformed and Islamic tradition, followed by an address by Baron Goldstein, President of the International Auschwitz Committee. Testimonies were then given by Mr S. Ryniak, a former deportee (registered under No. 31, he was the oldest surviving deportee), Mr S. Weiss, Speaker of the Knesset of the State of Israel, Mr Wiesel, Nobel Peace Prize laureate, and Mr Walesa. The predominant note sounded by these speakers was an appeal for tolerance.

Wreaths bearing the colours of each of the 31 countries whose citizens had been exterminated at Auschwitz were then placed at the site.

At the end of the ceremonies, thousands of candles were lit and placed along the railway as a tribute to the countless victims of Nazi persecution.

\* \* \*

Auschwitz symbolizes the most heinous crime ever committed in the history of mankind. For the Jewish people, it was an unprecedented tragedy, the extreme expression of the Hitler regime's attempt to annihilate them through genocide. For over one million men, women and children, it marked the final phase of an unspeakable ordeal. Of the victims, 90 per cent were Jews; the others were Romanies, Soviet prisoners of war, and members of the Resistance, the Polish intelligentsia and the clergy. There were a mere 7,500 survivors.

Auschwitz also represents the greatest failure in the history of the ICRC, aggravated by its lack of decisiveness in taking steps to aid the victims of persecution.

By its presence at these ceremonies, the ICRC wished to show its awareness of the terrible wounds inflicted, and of the need to keep the memory of these events alive in order to protect victims from a second death — that of being forgotten.



**GENEVA CONVENTIONS OF 12 AUGUST 1949  
AND  
ADDITIONAL PROTOCOLS OF 8 JUNE 1977  
RATIFICATIONS, ACCESSIONS AND SUCCESSIONS  
AS AT 31 DECEMBER 1994**

## **1. Abbreviations**

R/A/S = **Ratification**: a treaty is generally open for signature for a certain time following the conference which has adopted it. However, a signature is not binding on a State unless it has been endorsed by ratification. The time limits having elapsed, the Conventions and the Protocols are no longer open for signature. The States which have not signed them may at any time accede or, in the appropriate circumstances, succeed to them.

**Accession**: instead of signing and then ratifying a treaty, a State may become party to it by the single act called accession.

**Succession** (declaration of): a newly independent State may declare that it will abide by a treaty which was applicable to it prior to its independence. A State may also declare that it will provisionally abide by such treaties during the time it deems necessary to examine their texts carefully and to decide on accession or succession to some or all of the said treaties (declaration of provisional application of the treaties). At present no State is bound by such a declaration.

R/D = **Reservation/Declaration**: unilateral statement, however phrased or named, made by a State when ratifying, acceding or succeeding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (provided that such reservations are not incompatible with the object and purpose of the treaty).

D90 = **Declaration** provided for under Article 90 of Protocol I (prior acceptance of the competence of the International Fact-Finding Commission).

## 2. Dates

The dates indicated are those on which the Swiss Federal Department of Foreign Affairs received the official instrument from the State that was ratifying, acceding to or succeeding to the Conventions or Protocols or accepting the competence of the Commission provided for under Article 90 of Protocol I. They thus represent neither the date on which ratification, accession, succession or acceptance of the Commission was decided upon by the State concerned nor that on which the corresponding instrument was sent.

*N.B.: The dates given for succession to the Geneva Conventions by CONGO, JAMAICA, MADAGASCAR, MAURITANIA, NIGER, NIGERIA, RWANDA, SENEGAL, SIERRA LEONE and ZAIRE used to be those on which the corresponding instruments had been officially adopted. They have now been replaced by the dates on which the depositary received those instruments.*

## 3. Entry into force

Except as mentioned in footnotes at the end of the tables, for all States the entry into force of the Conventions and of the Protocols occurs six months after the date given in the present document; for States which have made a declaration of succession, entry into force takes place retroactively, on the day of their accession to independence.

The 1949 Geneva Conventions entered into force on 21 October 1950.

The 1977 Protocols entered into force on 7 December 1978.

## 4. Names of countries

The names of countries given in the following list may differ from the official names of States.

## 5. Update since 31.12.93

### **Ratifications, accessions or successions to Additional Protocol I**

San Marino	:	05.04.1994
Ethiopia	:	08.04.1994
Lesotho	:	20.05.1994

Dominican Republic	:	26.05.1994
Namibia	:	17.06.1994

**Ratifications, accessions or successions to Additional Protocol II**

San Marino	:	05.04.1994
Ethiopia	:	08.04.1994
Lesotho	:	20.05.1994
Dominican Republic	:	26.05.1994
Namibia	:	17.06.1994

**Declaration under Article 90**

Rwanda	:	08.07.1993 (notification: 17.01.95)
Bulgaria	:	09.05.1994
Portugal	:	01.07.1994
Namibia	:	21.07.1994

## 6. Ratifications, accessions and successions

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Afghanistan	26.09.1956 R						
Albania	27.05.1957 R	X	16.07.1993 A			16.07.1993 A	
Algeria	20.06.1960 A		16.08.1989 A	X	16.08.1989	16.08.1989 A	
Andorra	17.09.1993 A						
Angola	20.09.1984 A	X	20.09.1984 A	X			
Antigua and Barbuda	06.10.1986 S		06.10.1986 A			06.10.1986 A	
Argentina	18.09.1956 R		26.11.1986 A	X		26.11.1986 A	X
Armenia	07.06.1993 A		07.06.1993 A			07.06.1993 A	
Australia	14.10.1958 R	X	21.06.1991 R	X	23.09.1992	21.06.1991 R	
Austria	27.08.1953 R		13.08.1982 R	X	13.08.1982	13.08.1982 R	X
Azerbaijan	01.06.1993 A						
Bahamas	11.07.1975 S		10.04.1980 A			10.04.1980 A	
Bahrain	30.11.1971 A		30.10.1986 A			30.10.1986 A	
Bangladesh	04.04.1972 S		08.09.1980 A			08.09.1980 A	
Barbados	10.09.1968 S	X	19.02.1990 A			19.02.1990 A	
Belarus	03.08.1954 R	X	23.10.1989 R		23.10.1989	23.10.1989 R	
Belgium	03.09.1952 R		20.05.1986 R	X	27.03.1987	20.05.1986 R	
Belize	29.06.1984 A		29.06.1984 A			29.06.1984 A	
Benin	14.12.1961 S		28.05.1986 A			28.05.1986 A	
Bhutan	10.01.1991 A						
Bolivia	10.12.1976 R		08.12.1983 A		10.08.1992	08.12.1983 A	
Bosnia-Herzegovina	31.12.1992 S		31.12.1992 S		31.12.1992	31.12.1992 S	
Botswana	29.03.1968 A		23.05.1979 A			23.05.1979 A	
Brazil	29.06.1957 R		05.05.1992 A		23.11.1993	05.05.1992 A	
Brunei Darussalam	14.10.1991 A		14.10.1991 A			14.10.1991 A	
Bulgaria	22.07.1954 R	X	26.09.1989 R		09.05.1994	26.09.1989 R	
Burkina Faso	07.11.1961 S		20.10.1987 R			20.10.1987 R	
Burundi	27.12.1971 S		10.06.1993 A			10.06.1993 A	
Cambodia	08.12.1958 A						
Cameroon	16.09.1963 S		16.03.1984 A			16.03.1984 A	
Canada	14.05.1965 R		20.11.1990 R	X	20.11.1990	20.11.1990 R	X
Cape Verde	11.05.1984 A						
Central African Republic	01.08.1966 S		17.07.1984 A			17.07.1984 A	
Chad	05.08.1970 A						
Chile	12.10.1950 R		24.04.1991 R		24.04.1991	24.04.1991 R	
China	28.12.1956 R	X	14.09.1983 A	X		14.09.1983 A	
Colombia	08.11.1961 R		01.09.1993 A				
Comoros	21.11.1985 A		21.11.1985 A			21.11.1985 A	
Congo	04.02.1967 S		10.11.1983 A			10.11.1983 A	
Costa Rica	15.10.1969 A		15.12.1983 A			15.12.1983 A	
Côte d'Ivoire	28.12.1961 S		20.09.1989 R			20.09.1989 R	
Croatia	11.05.1992 S		11.05.1992 S		11.05.1992	11.05.1992 S	
Cuba	15.04.1954 R		25.11.1982 A				
Cyprus	23.05.1962 A		01.06.1979 R				
Czech Republic	05.02.1993 S	X	05.02.1993 S			05.02.1993 S	
Denmark	27.06.1951 R		17.06.1982 R	X	17.06.1982	17.06.1982 R	
Djibouti	06.03.1978' S		08.04.1991 A			08.04.1991 A	

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Dominica	28.09.1981 S						
Dominican Republic	22.01.1958 A		26.05.1994 A			26.05.1994 A	
Ecuador	11.08.1954 R		10.04.1979 R			10.04.1979 R	
Egypt	10.11.1952 R		09.10.1992 R	X		09.10.1992 R	X
El Salvador	17.06.1953 R		23.11.1978 R			23.11.1978 R	
Equatorial Guinea	24.07.1986 A		24.07.1986 A			24.07.1986 A	
Estonia	18.01.1993 A		18.01.1993 A			18.01.1993 A	
Ethiopia	02.10.1969 R		08.04.1994 A			08.04.1994 A	
Fiji	09.08.1971 S						
Finland	22.02.1955 R		07.08.1980 R	X	07.08.1980	07.08.1980 R	
France	28.06.1951 R					24.02.1984 <sup>2</sup> A	X
Gabon	26.02.1965 S		08.04.1980 A			08.04.1980 A	
Gambia	20.10.1966 S		12.01.1989 A			12.01.1989 A	
Georgia	14.09.1993 A		14.09.1993 A			14.09.1993 A	
Germany	03.09.1954 A	X	14.02.1991 R	X	14.02.1991	14.02.1991 R	X
Ghana	02.08.1958 A		28.02.1978 <sup>3</sup> R			28.02.1978 <sup>4</sup> R	
Greece	05.06.1956 R		31.03.1989 R			15.02.1993 A	
Grenada	13.04.1981 S						
Guatemala	14.05.1952 R		19.10.1987 R			19.10.1987 R	
Guinea	11.07.1984 A		11.07.1984 A		20.12.1993	11.07.1984 A	
Guinea-Bissau	21.02.1974 A	X	21.10.1986 A			21.10.1986 A	
Guyana	22.07.1968 S		18.01.1988 A			18.01.1988 A	
Haiti	11.04.1957 A						
Holy See	22.02.1951 R		21.11.1985 R	X		21.11.1985 R	X
Honduras	31.12.1965 A						
Hungary	03.08.1954 R	X	12.04.1989 R		23.09.1991	12.04.1989 R	
Iceland	10.08.1965 A		10.04.1987 R	X	10.04.1987	10.04.1987 R	
India	09.11.1950 R						
Indonesia	30.09.1958 A						
Iran (Islamic Rep. of)	20.02.1957 R	X					
Iraq	14.02.1956 A						
Ireland	27.09.1962 R						
Israel	06.07.1951 R	X					
Italy	17.12.1951 R		27.02.1986 R	X	27.02.1986	27.02.1986 R	
Jamaica	20.07.1964 S		29.07.1986 A			29.07.1986 A	
Japan	21.04.1953 A						
Jordan	29.05.1951 A		01.05.1979 R			01.05.1979 R	
Kazakhstan	05.05.1992 S		05.05.1992 S			05.05.1992 S	
Kenya	20.09.1966 A						
Kiribati	05.01.1989 S						
Korea (Dem. People's Rep. of)	27.08.1957 A	X	09.03.1988 A				
Korea (Republic of)	16.08.1966 <sup>5</sup> A	X	15.01.1982 R	X		15.01.1982 R	
Kuwait	02.09.1967 A	X	17.01.1985 A			17.01.1985 A	
Kyrgyzstan	18.09.1992 S		18.09.1992 S			18.09.1992 S	
Lao People's Dem. Rep.	29.10.1956 A		18.11.1980 R			18.11.1980 R	
Latvia	24.12.1991 A		24.12.1991 A			24.12.1991 A	
Lebanon	10.04.1951 R						
Lesotho	20.05.1968 S		20.05.1994 A			20.05.1994 A	
Liberia	29.03.1954 A		30.06.1988 A			30.06.1988 A	

# INTERNATIONAL REVIEW OF THE RED CROSS

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Libyan Arab Jamahiriya	22.05.1956 A		07.06.1978 A			07.06.1978 A	
Liechtenstein	21.09.1950 R		10.08.1989 R	X	10.08.1989	10.08.1989 R	X
Luxembourg	01.07.1953 R		29.08.1989 R		12.05.1993	29.08.1989 R	
Madagascar	18.07.1963 S		08.05.1992 R		27.07.1993	08.05.1992 R	
Malawi	05.01.1968 A		07.10.1991 A			07.10.1991 A	
Malaysia	24.08.1962 A						
Maldives	18.06.1991 A		03.09.1991 A			03.09.1991 A	
Mali	24.05.1965 A		08.02.1989 A			08.02.1989 A	
Malta	22.08.1968 S		17.04.1989 A	X	17.04.1989	17.04.1989 A	X
Mauritania	30.10.1962 S		14.03.1980 A			14.03.1980 A	
Mauritius	18.08.1970 S		22.03.1982 A			22.03.1982 A	
Mexico	29.10.1952 R		10.03.1983 A				
Moldova (Republic of)	24.05.1993 A		24.05.1993 A			24.05.1993 A	
Monaco	05.07.1950 R						
Mongolia	20.12.1958 A						
Morocco	26.07.1956 A						
Mozambique	14.03.1983 A		14.03.1983 A				
Myanmar	25.08.1992 A						
Namibia	22.08.1991 <sup>6</sup> S		17.06.1994 A		21.07.1994	17.06.1994 A	
Nepal	07.02.1964 A						
Netherlands	03.08.1954 R		26.06.1987 R	X	26.06.1987	26.06.1987 R	
New Zealand	02.05.1959 R	X	08.02.1988 R	X	08.02.1988	08.02.1988 R	
Nicaragua	17.12.1953 R						
Niger	21.04.1964 S		08.06.1979 R			08.06.1979 R	
Nigeria	20.06.1961 S		10.10.1988 A			10.10.1988 A	
Norway	03.08.1951 R		14.12.1981 R		14.12.1981	14.12.1981 R	
Oman	31.01.1974 A		29.03.1984 A	X		29.03.1984 A	X
Pakistan	12.06.1951 R	X					
Panama	10.02.1956 A						
Papua New Guinea	26.05.1976 S						
Paraguay	23.10.1961 R		30.11.1990 A			30.11.1990 A	
Peru	15.02.1956 R		14.07.1989 R			14.07.1989 R	
Philippines	06.10.1952 <sup>7</sup> R					11.12.1986 A	
Poland	26.11.1954 R	X	23.10.1991 R		02.10.1992	23.10.1991 R	
Portugal	14.03.1961 R	X	27.05.1992 R		01.07.1994	27.05.1992 R	
Qatar	15.10.1975 A		05.04.1988 A	X	24.09.1991		
Romania	01.06.1954 R	X	21.06.1990 R			21.06.1990 R	
Russian Federation	10.05.1954 R	X	29.09.1989 R	X	29.09.1989	29.09.1989 R	X
Rwanda	05.05.1964 S		19.11.1984 A		08.07.1993	19.11.1984 A	
Saint Kitts and Nevis	14.02.1986 S		14.02.1986 A			14.02.1986 A	
Saint Lucia	18.09.1981 S		07.10.1982 A			07.10.1982 A	
Saint Vincent and Grenadines	01.04.1981 A		08.04.1983 A			08.04.1983 A	
Samoa	23.08.1984 S		23.08.1984 A			23.08.1984 A	
San Marino	29.08.1953 A		05.04.1994 R			05.04.1994 R	
Sao Tome and Principe	21.05.1976 A						
Saudi Arabia	18.05.1963 A		21.08.1987 A	X			
Senegal	18.05.1963 S		07.05.1985 R			07.05.1985 R	
Seychelles	08.11.1984 A		08.11.1984 A		22.05.1992	08.11.1984 A	

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Sierra Leone	10.06.1965 S		21.10.1986 A			21.10.1986 A	
Singapore	27.04.1973 A						
Slovakia	02.04.1993 S	X	02.04.1993 S			02.04.1993 S	
Slovenia	26.03.1992 S		26.03.1992 S		26.03.1992	26.03.1992 S	
Solomon Islands	06.07.1981 S		19.09.1988 A			19.09.1988 A	
Somalia	12.07.1962 A						
South Africa	31.03.1952 A						
Spain	04.08.1952 R		21.04.1989 R	X	21.04.1989	21.04.1989 R	
Sri Lanka	28.02.1959 <sup>8</sup> R						
Sudan	23.09.1957 A						
Suriname	13.10.1976 S	X	16.12.1985 A			16.12.1985 A	
Swaziland	28.06.1973 A						
Sweden	28.12.1953 R		31.08.1979 R	X	31.08.1979	31.08.1979 R	
Switzerland	31.03.1950 <sup>9</sup> R		17.02.1982 R	X	17.02.1982	17.02.1982 R	
Syrian Arab Republic	02.11.1953 R		14.11.1983 A	X			
Tajikistan	13.01.1993 S		13.01.1993 S			13.01.1993 S	
Tanzania (United Rep. of)	12.12.1962 S		15.02.1983 A			15.02.1983 A	
Thailand	29.12.1954 A						
The Former Y.R. of Macedonia	01.09.1993 S		01.09.1993 S		01.09.1993	01.09.1993 S	
Togo	06.01.1962 S		21.06.1984 R		21.11.1991	21.06.1984 R	
Tonga	13.04.1978 S						
Trinidad and Tobago	24.09.1963 <sup>10</sup> A						
Tunisia	04.05.1957 A		09.08.1979 R			09.08.1979 R	
Turkey	10.02.1954 R						
Turkmenistan	10.04.1992 S		10.04.1992 S			10.04.1992 S	
Tuvalu	19.02.1981 S						
Uganda	18.05.1964 A		13.03.1991 A			13.03.1991 A	
Ukraine	03.08.1954 R	X	25.01.1990 R		25.01.1990	25.01.1990 R	
United Arab Emirates	10.05.1972 A		09.03.1983 A	X	06.03.1992	09.03.1983 A	X
United Kingdom	23.09.1957 R	X					
United States of America	02.08.1955 R	X					
Uruguay	05.03.1969 R	X	13.12.1985 A		17.07.1990	13.12.1985 A	
Uzbekistan	08.10.1993 A		08.10.1993 A			08.10.1993 A	
Vanuatu	27.10.1982 A		28.02.1985 A			28.02.1985 A	
Venezuela	13.02.1956 R						
Viet Nam	28.06.1957 A	X	19.10.1981 R				
Yemen	16.07.1970 A	X	17.04.1990 R			17.04.1990 R	
Yugoslavia	21.04.1950 R	X	11.06.1979 R	X		11.06.1979 R	
Zaire	24.02.1961 S		03.06.1982 A				
Zambia	19.10.1966 A						
Zimbabwe	07.03.1983 A		19.10.1992 A			19.10.1992 A	

<sup>1</sup> Djibouti's declaration of succession in respect of the First Convention was dated 26.01.78.

<sup>2</sup> On accession to Protocol II, France made a communication concerning Protocol I.

<sup>3</sup> Entry into force on 07.12.78.

- <sup>4</sup> Entry into force on 07.12.78.
- <sup>5</sup> Entry into force on 23.09.66, the Republic of Korea having invoked Art.62/61/141/157 common respectively to the First, Second, Third and Fourth Conventions (immediate effect).
- <sup>6</sup> An instrument of accession to the Geneva Conventions and their Additional Protocols was deposited by the United Nations Council for Namibia on 18.10.83. In an instrument deposited on 22.08.91, Namibia declared its succession to the Geneva Conventions, which were previously applicable pursuant to South Africa's accession on 31.03.52.
- <sup>7</sup> The First Geneva Convention was ratified on 7.03.1951.
- <sup>8</sup> Accession to the Fourth Geneva Convention on 23 February 1959 (Ceylon had signed only the First, Second, and Third Conventions).
- <sup>9</sup> Entry into force on 21.10.50.
- <sup>10</sup> Accession to the First Geneva Convention on 17.05.1963.

### ***Palestine***

On 21 June 1989, the Swiss Federal Department of Foreign Affairs received a letter from the Permanent Observer of Palestine to the United Nations Office at Geneva informing the Swiss Federal Council "that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto".

On 13 September 1989, the Swiss Federal Council informed the States that it was not in a position to decide whether the letter constituted an instrument of accession, "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine".

### ***Lithuania***

Party to the 1929 Geneva Conventions (sick and wounded, prisoners of war).

## **7. Totals**

<b>Number of States party to the 1949 Geneva Conventions :</b>	<b>185</b>
<b>Number of States party to Additional Protocol I :</b>	<b>135</b>
<b>Number of States having made the declaration under Article 90 :</b>	<b>42</b>
<b>Number of States party to Additional Protocol II :</b>	<b>125</b>
<b>Number of States Members of the United Nations :</b>	<b>185</b>

States Members of the UN or Parties to the Statute of the International Court of Justice, not party to the 1949 Geneva Conventions: Eritrea, Lithuania, Marshall, Micronesia, Nauru, Palau.



## 8. Chronological list of States having made the declaration provided for under Article 90 of Protocol I

1	Sweden	:	31.08.1979
2	Finland	:	07.08.1980
3	Norway	:	14.12.1981
4	Switzerland	:	17.02.1982
5	Denmark	:	17.06.1982
6	Austria	:	13.08.1982
7	Italy	:	27.02.1986
8	Belgium	:	27.03.1987
9	Iceland	:	10.04.1987
10	Netherlands	:	26.06.1987
11	New Zealand	:	08.02.1988
12	Malta	:	17.04.1989
13	Spain	:	21.04.1989
14	Liechtenstein	:	10.08.1989
15	Algeria	:	16.08.1989
16	Russian Federation	:	29.09.1989
17	Belarus	:	23.10.1989
18	Ukraine	:	25.01.1990
19	Uruguay	:	17.07.1990
20	Canada	:	20.11.1990
21	Germany	:	14.02.1991
22	Chile	:	24.04.1991
23	Hungary	:	23.09.1991
24	Qatar	:	24.09.1991
25	Togo	:	21.11.1991
26	United Arab Emirates	:	06.03.1992
27	Slovenia	:	26.03.1992
28	Croatia	:	11.05.1992
29	Seychelles	:	22.05.1992
30	Bolivia	:	10.08.1992
31	Australia	:	23.09.1992
32	Poland	:	02.10.1992
33	Bosnia-Herzegovina	:	31.12.1992
34	Luxembourg	:	12.05.1993
35	Rwanda	:	08.07.1993
36	Madagascar	:	27.07.1993
37	The Former Y.R. of Macedonia	:	01.09.1993
38	Brazil	:	23.11.1993
39	Guinea	:	20.12.1993
40	Bulgaria	:	09.05.1994
41	Portugal	:	01.07.1994
42	Namibia	:	21.07.1994

## **Books and reviews**

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### CONFLICTOS ARMADOS INTERNOS Y DERECHO INTERNACIONAL HUMANITARIO

#### *Internal armed conflicts and international humanitarian law*

Although great strides have been made in developing the legal rules governing relations among States, the international community today is gravely concerned with the problem posed by the proliferation of non-international armed conflicts. The author of this study<sup>1</sup> analyses the phenomenon of violence within the confines of a State in relation to the application of international humanitarian law.

As the number of armed conflicts in the world has increased in recent years, so has the number of publications devoted to the discussion of humanitarian law. However, few of them approach the subject solely from the point of view of the rules applicable to internal armed conflicts. One of the main interests of this study is no doubt the fact that it helps to fill this gap by providing an in-depth analysis of this aspect of the law and thereby promotes a better understanding of it.

After reviewing the major internal armed conflicts which have taken place in the world since 1945, the author points out that never before in the history of mankind have there been as many conflicts of this type, and of such varied duration and intensity, as there are today.

The study advances ideological extremism, religious, racial and cultural fanaticism and local social and economic factors as the major causes of the increase in internal armed conflicts. Taking into account this reality, it then discusses the rules of international humanitarian law which are intended to make these situations less inhuman. It is well known that internal armed conflicts are far more ruthless than war between States.

In summarizing the historical development of the international rules governing internal armed conflicts, taking as a starting point the work of the Salamanca

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<sup>1</sup> Araceli Mangas Martín, *Conflictos armados internos y derecho internacional humanitario*, Ediciones Universidad de Salamanca, 1992, pp. 192.

school of theologians and jurists and of E. de Vattel, the author concentrates mainly on recent codification of the law. In particular, she points to the initiatives by the ICRC which led to the adoption by International Conferences of the Red Cross of resolutions that form the basis of current codification in this area. One of the most valuable aspects of the study is its in-depth analysis of the codification process which led to the adoption of Article 3 common to the four Geneva Conventions of 1949 and of their Additional Protocol II of 1977. A detailed examination is made of the discussions on proposals for humanitarian law applicable in non-international armed conflicts which took place during the 1949 and 1977 Diplomatic Conferences.

The study's interest lies not only in its thorough analysis of every aspect of the law applicable in internal armed conflicts, but also in its examination of the implementation of that law in present conflicts. The study draws, among other sources, on Annual Reports of the ICRC and on various positions adopted by the institution.

Included in this examination is a discussion of the distinction between internal armed conflicts and international armed conflicts and, within the former, of the various areas of practical application of humanitarian law, which are determined by the seriousness of the situation, the general nature of the rules governing internal armed conflicts and the legal character of humanitarian law. Also examined are the provisions on protection included in the law and the entire question of monitoring its implementation.

Araceli Mangas Martín's thorough study, with its extensive bibliography, is particularly relevant today when the international community is faced with so many internal armed conflicts. It will no doubt provide the reader with a great deal of information and food for thought.

*María Teresa Dutli*

## ADDRESSES OF NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

- AFGHANISTAN — Afghan Red Crescent Society, Puli Hartan, *Kabul*.
- ALBANIA — Albanian Red Cross, Rue Qamil Guranjaku No. 2, *Tirana*.
- ALGERIA (People's Democratic Republic of) — Algerian Red Crescent, 15 bis, boulevard Mohamed V, *Algiers*.
- ANDORRA — Andorra Red Cross, Prat de la Creu 22, *Andorra la Vella*.
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- BAHAMAS — The Bahamas Red Cross Society, P.O. Box N-8331, *Nassau*.
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- BANGLADESH — Bangladesh Red Crescent Society, 684-686, Bara Magh Bazar, G.P.O. Box No. 579, *Dhaka*.
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- BELIZE — Belize Red Cross Society, P.O. Box 413, *Belize City*.
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- CZECH REPUBLIC — Czech Red Cross, Thunovská 18, 118 04 *Praha 1*.
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- DOMINICA — Dominica Red Cross Society, P.O. Box 59, *Roseau*.
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- KENYA — Kenya Red Cross Society, P.O. Box 40712, *Nairobi*.
- KOREA (Democratic People's Republic of) — Red Cross Society of the Democratic People's Republic of Korea, Ryonhwa 1, Central District, *Pyeongyang*.
- KOREA (Republic of) — The Republic of Korea National Red Cross, 32-3Ka, Nam San Dong, Choong-Ku, *Seoul 0043*.
- KUWAIT — Kuwait Red Crescent Society, P.O. Box 1359 Safat.
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- LATVIA — Latvian Red Cross Society, 28, Skolas Street, 226 300 *Riga*.
- LEBANON — Lebanese Red Cross, rue Spears, *Beirut*.
- LESOTHO — Lesotho Red Cross Society, P.O. Box 366, *Maseru 100*.
- LIBERIA — Liberian Red Cross Society, National Headquarters, 107 Lynch Street, 1000 *Monrovia 20*.
- LIBYAN ARAB JAMAHIRIYA — Libyan Red Crescent, P.O. Box 541, *Benghazi*.
- LIECHTENSTEIN — Liechtenstein Red Cross, Heilgkreuz, 9490 *Vaduz*.
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- LUXEMBOURG — Luxembourg Red Cross, Parc de la Ville, B.P. 404, 2014 *Luxembourg*.
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- MALTA — Malta Red Cross Society, 104, St. Ursula Street, Valletta, *Malta*.
- MAURITANIA — Mauritanian Red Crescent, B.P. 344, avenue Gamal Abdel Nasser, *Nouakchott*.
- MAURITIUS — Mauritius Red Cross Society, Ste Thérèse Street, *Curepipe*.
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- MONACO — Red Cross of Monaco, 27 boul. de Suisse, *Monte Carlo*.
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- MOROCCO — Moroccan Red Crescent, B.P. 189, *Rabat*.
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- PARAGUAY — Paraguayan Red Cross, Brasil 216, esq. José Berges, *Asunción*.
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- SUDAN — The Sudanese Red Crescent, P.O. Box 235, *Khartoum*.
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- SWITZERLAND — Swiss Red Cross, Rainmattstrasse 10, B.P. 2699, 3001 *Berne*.
- SYRIAN ARAB REPUBLIC — Syrian Arab Red Crescent, Bd Mahdi Ben Barake, *Damascus*.
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- ZAMBIA — Zambia Red Cross Society, P.O. Box 50 001, 2837 Saddam Hussein Boulevard, Longacres, *Lusaka*.
- ZIMBABWE — The Zimbabwe Red Cross Society, P.O. Box 1406, *Harare*.

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# INTERNATIONAL REVIEW

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## MEETING OF THE INTERGOVERNMENTAL GROUP OF EXPERTS FOR THE PROTECTION OF WAR VICTIMS

*(Geneva, 23-27 January 1995)*

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### A comparison of self-evaluating state reporting systems

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### *HUMANITARIAN POLICY AND OPERATIONAL ACTIVITIES*

### Coordination of emergency humanitarian assistance

### ICRC action in Mexico

*(January-August 1994)*

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*Geneva Conventions of 12 August 1949  
and Additional Protocols of 8 June 1977:  
Ratifications, accessions and successions  
as at 31 December 1994*

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